2-23-89
Vol. 54 No. 35
Pages 7751-7924

federal register

Thursday
February 23, 1989

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 54, No. 35

Thursday, February 23, 1989

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5937 7751
Executive Orders:
12669 7753

5 CFR
890 7755

7 CFR
Proposed Rules:
800 7778

10 CFR
2 7756

12 CFR
611 (2 documents) 7758
612 7758
614 (2 documents) 7758, 7759
615 7759
618 7758
620 (2 documents) 7758, 7759
621 7759

14 CFR
39 (2 documents) 7759, 7761
Proposed Rules:
39 7780

19 CFR
Proposed Rules:
132 7781

21 CFR
178 7922
Proposed Rules:
182 7783
184 7783

26 CFR
1 7762
602 7762
Proposed Rules:
1 7783
602 7783

33 CFR
181 7763

38 CFR
Proposed Rules:
21 7784

40 CFR
52 (3 documents) 7764–7767
62 7770
Proposed Rules:
52 7794
180 7796

42 CFR
Proposed Rules:
431 7798
433 7798
435 7798
436 7798
440 7798
447 7798

47 CFR
97 7771
Proposed Rules:
2 7812
73 7813
87 7812

48 CFR
Proposed Rules:
Ch. 53 7813

49 CFR
580 7772

50 CFR
217 7773
222 7773
227 7773
655 7777
Proposed Rules:
17 7813
611 7814
672 7814
675 7814

Federal Register
Vol. 54, No. 35
Thursday, February 23, 1989

Presidential Documents

Title 3—

The President

Proclamation 5937 of February 21, 1989

American Heart Month, 1989

By the President of the United States of America

A Proclamation

Twenty-five years ago, the Government of the United States of America proclaimed its cooperative support of the fight against the Nation's leading killer—heart disease. This year, as in each year since, that support continues.

Diseases of the heart and blood vessels will claim the lives of nearly one million Americans this year. About one-half of all deaths each year are attributed to cardiovascular diseases—almost as many deaths as cancer, accidents, respiratory diseases, AIDS, and all other causes of death combined.

Nearly 66 million of our citizens, more than one-fourth of our population, suffer from some form of cardiovascular disease. High blood pressure alone threatens the lives of more than 60 million Americans age 6 and older. Heart disease strikes regardless of age, race, or sex. Its toll in human suffering is incalculable.

The American Heart Association, a not-for-profit volunteer health agency, estimates the economic cost of cardiovascular diseases in 1989 will be more than $88 billion in lost productivity and medical expenses. Each year, cardiovascular diseases account for more than 2 million years of potential life lost, based on a life span of 65 years.

But we are making progress. The American Heart Association and the Federal Government, through the National Heart, Lung and Blood Institute, have been working together since 1948 to find better ways to prevent cardiovascular diseases and stroke and inform the public and educate the medical community about the most effective techniques to treat these diseases. Most recently, the National Cholesterol Education Program was instituted to educate consumers about the dangers of high cholesterol levels. At the center of the National Cholesterol Education Program is its coordinating committee of over 20 member organizations representing major medical associations, voluntary health organizations, community programs, and Federal agencies involved in health and cholesterol education.

Medical advances such as new surgical techniques to repair heart defects, improved pharmacological therapies, emergency systems to prevent death, and knowledge to prevent heart disease from occurring have significantly reduced premature death and disability due to cardiovascular diseases and stroke. From 1976 to 1986, the age-adjusted death rate for cardiovascular diseases dropped 24 percent. But there is still more to be done. One American dies of some form of cardiovascular disease every 32 seconds.

Cardiologists and other health professionals are seeking to reduce the risk of heart disease, stroke, and atherosclerosis. By encouraging Americans of all ages to control high blood pressure, stop smoking, reduce their intake of cholesterol, saturated fats, and sodium in their diets, and exercise regularly, many deaths can be prevented.

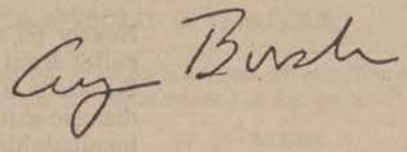
The Federal Government supports a wide array of cardiovascular research projects and encourages all Americans to reduce the risks of heart disease by maintaining good health habits.

The American Heart Association and its more than 2.4 million volunteers have contributed to this effort through their support of research and the shared commitment to educate Americans about the need to adopt a sound regimen of proper diet and exercise.

Recognizing that Americans everywhere have a role to play in this continuing battle against a major killer, the Congress, by Joint Resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b), has requested the President to issue annually a proclamation designating February as "American Heart Month."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of February 1989 as "American Heart Month." I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating cardiovascular diseases and stroke.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of February, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-4365
Filed 2-21-89; 4:33 pm]
Billing code 3195-01-M

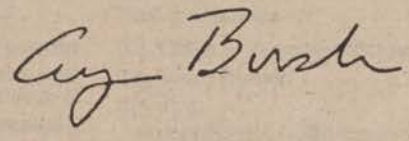
Presidential Documents

Executive Order 12669 of February 20, 1989

Organization of Eastern Caribbean States

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 1 of the International Organizations Immunities Act (22 U.S.C. 288) and Public Law 100–362; 102 Stat. 819, July 6, 1988, it is hereby ordered that the Organization of Eastern Caribbean States is designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

This Order is not intended to abridge in any respect the privileges, exemptions, or immunities that the Organization of Eastern Caribbean States may have acquired or may acquire by international agreements or by congressional action.



THE WHITE HOUSE,
February 20, 1989.

[FR Doc. 89–4366
Filed 2–21–89; 4:34 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 54, No. 35
Thursday, February 23, 1989

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits; Health Insurance Coverage for Certain Temporary Employees

February 23, 1989.

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management issues interim regulations to implement Title III of the Federal Employees Health Benefits Amendments Act of 1988. The interim regulations give certain temporary employees, who were previously excluded from enrolling, the opportunity to participate in the Federal Employees Health Benefits (FEHB) Program.

DATES Interim rule effective March 14, 1989. Comments must be submitted on or before April 24, 1989.

ADDRESS: Comments may be sent or delivered to the U.S. Office of Personnel Management, Office of Retirement and Insurance Policy, Room 4351, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Margaret C. Randall, (202) 632–4634.

SUPPLEMENTARY INFORMATION: The Federal Employees Health Benefits Amendments Act of 1988, Pub. L. 100–654, was enacted on November 14, 1988. Title III of the Act, which provides health insurance coverage for certain temporary employees, is effective March 14, 1989. Under Title III, temporary employees who have completed 1 year of current continuous employment, excluding any break in service of 5 days or less, are eligible to participate in the FEHB Program. Title III of the Act also provides that any temporary employee who enrolls, based on meeting the eligibility criteria in Title III of the Act, must have withheld from his or her pay the full subscription charge. The government will make no contribution to the premium.

The amendments to §§ 890.102, 890.501, and 890.502 of 5 CFR are intended to make those sections conform with provisions of Title III of the Act. Section 890.109 is added to exclude from consideration, when determining eligibility for continued coverage during retirement, periods during which temporary employees are eligible under Title III of the Act for health benefits. Section 890.109 is intended to provide fairness to temporary employees, who are precluded from participating in a retirement system and may elect not to enroll in the FEHB Program. If they subsequently receive a permanent appointment covered under a retirement system, enroll in the FEHB program, and then retire while enrolled for less than 5 years immediately preceding retirement, they will not be penalized for their earlier decision not to enroll as a temporary employee. For purposes of continuing enrollment during retirement, such employees' opportunity to enroll would have begun when they received the permanent appointment which entitled them to participate in a retirement system and also entitled them to receive the government contribution toward their health benefits premium payments.

The Office of Personnel Management will conduct a special open enrollment period from March 14–April 14, 1989, for employees who meet the eligibility requirements of Pub. L. 100–654 on or before March 14, 1989. Employees who become eligible to enroll after March 14, 1989, will be treated as any other employee becoming eligible to enroll for the first time. (See § 890.301(a) of 5 CFR.) After the special open enrollment period, agencies must notify temporary employees as soon as they become eligible to enroll and the employees must be given 31 days to register to enroll. The Office of Personnel Management will issue instructions in the Federal Personnel Manual system about the special open enrollment period and about subsequent enrollments.

Under section 553(b)(3)(B) of Title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived to provide entitlements clearly conferred by Pub. L. 100–654 to affected individuals beginning March 14, 1989.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management,
Constance Horner,
Director.

Accordingly, OPM amends 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Pub. L. 100–654; § 890.803 also issued under sec. 303 of Pub. L. 99–569, 100 Stat. 3190, sec. 188 of Pub. L. 100–204, 101 Stat. 1331, and sec. 204 of Pub. L. 100–238, 101 Stat. 1744.

2. In § 890.102, paragraphs (c) (1) and (2) are revised to read as follows:

§ 890.102 Coverage.

* * * * *

(c) * * *

(1) An employee who is serving under an appointment limited to 1 year or less and who has not completed 1 year of current continuous employment, excluding any break in service of 5 days or less, except an acting postmaster and a Presidential appointee appointed to fill an unexpired term.

(2) An employee who is expected to work less than 6 months in each year, except for an employee who is employed under an OPM approved career-related work-study program under Schedule B of at least 1 year's duration and who is expected to be in a pay status for at least one-third of the

total period of time from the date of the first appointment to the completion of the work-study program.

* * * * *

3. A new § 890.109 is added to read as follows:

§ 890.109 Exclusion of certain periods of eligibility when determining continued coverage during retirement.

Periods during which temporary employees are eligible under 5 U.S.C. 8906a to receive health benefits by enrolling and paying the full subscription charge, but are not eligible to participate in a retirement system, are not considered when determining eligibility for continued coverage during retirement.

4. Section § 890.501(e) is revised to read as follows:

§ 890.501 Government contributions.

* * * * *

(e) The employing office shall make a contribution for an employee for each pay period during which the enrollment continues except that certain temporary employees eligible under 5 U.S.C. 8906a must pay the full subscription charge including the government contribution.

5. A new paragraph (b)(4) is added to § 890.502 to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(b) * * *

(4) Employees who are eligible to enroll under 5 U.S.C. 8906a are responsible for payment of the full subscription charge including both the employee share and the government contribution.

[FR Doc. 89-4195 Filed 2-22-89; 8:45 am]

BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Issuance or Amendment of Power Reactor License or Permit Following Initial Decision

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule makes minor changes in the Commission's rules of practice by revising its regulation that specifies when a license, permit, or amendment can be issued following an initial adjudicatory decision resolving all issues before the presiding officer in favor of authorizing the licensing action. Because of recent judicial decisions affirming the validity of the Commission's existing procedures relating to the "immediate effectiveness" of a presiding officer's decision, the Commission has decided to retain the existing rule, with one exception. The final rule, as proposed, deletes outdated language in the existing regulation emanating from Three Mile Island-related regulatory policies upon which action has now been completed. This action is necessary to clarify existing procedures.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Bollwerk, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-1634.

SUPPLEMENTARY INFORMATION:

On February 4, 1987, the Commission published in the **Federal Register** (52 FR 3442-3447) proposed amendments to its Rules of Practice (10 CFR Part 2) that would revise its existing rule governing when a presiding officer's decision in favor of authorizing the issuance or amendment of a license or permit will become "effective" so as to permit the NRC staff to take the licensing action. In addition to clarifying the existing rule regarding the "effectiveness" of decisions on nuclear power plant construction permits and operating licenses, the proposed rule would have removed language in the rule that provided guidance to the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Board on how to factor into the adjudicatory process the various regulatory changes resulting from the 1979 accident at Three Mile Island, Unit 2 (TMI-2).

In two recent United States Court of Appeals cases, one decided not long before and one decided not long after the proposed rule was published, the provisions of the Commission's existing rule relating to effectiveness reviews for reactor operating licenses was upheld against arguments that it illegally allowed license issuance prior to the completion of the agency's appellate process and that it violated the Administrative Procedure Act's (APA) procedural protections for formal adjudicatory hearings. *Eddleman* v. *NRC*, 825 F.2d 46 (4th Cir. 1987); *Oystershell Alliance* v. *NRC*, 800 F.2d 1201 (D.C. Cir. 1986) (per curiam). In *Oystershell Alliance* the United States Court of Appeals for the District of Columbia Circuit held that the Commission's effectiveness review procedure allowing for the issuance of an operating license before the completion of the internal agency appellate process was lawful. 800 F.2d at 1205-07. In *Eddleman*, the United States Court of Appeals for the Fourth Circuit held that this procedure could be conducted without providing the procedural rights and protections afforded by the APA for formal adjudicatory hearings. 825 F.2d at 48.

As a result of these two cases upholding its present effectiveness procedures, the Commission has decided not to revise those procedures as proposed, with one exception. That exception is the revision to remove the TMI-related portions of § 2.764, specifically all or portions of paragraphs (e)(1)(ii), (e)(2)(ii), and (f)(1)(ii).

Of the fourteen comments on the proposed rule, only three made specific mention of this proposal to delete TMI-2 related language. Two of the comments, one filed by a nuclear utility and the other by a law firm which represents nuclear utilities, supported deletion of the provisions for the reasons stated in the Statement of Considerations supporting the proposed rule, namely that all applicable TMI-2 action items, which are embodied in NUREG-0737, "Clarification of TMI Action Plan Requirements," [1] are now covered by regulatory changes with which licensees must comply. The other comment, filed by two public interest groups, opposed deletion of these provisions on the ground that all TMI "lessons learned" have not been incorporated adequately into the Commission's regulations.

In the Statement of Considerations supporting the proposed rule, the Commission declared that "[t]he NRC staff has advised the Commission that all applicable NUREG-0737 action items are covered by regulatory changes and that a license applicant's compliance with existing regulations is a sufficient response to all applicable TMI-2 accident 'lessons learned'" (52 FR 3444). Accompanying this statement were references to a number of specific regulatory changes that are examples of the incorporation of those action items into the NRC's rules. *Id.* In opposing this revision, the commenters provide only the unsupported observation that this is not so. They then go on to assert that "NUREG-0737 requirements are not given the same priority as other regulations," citing a dispute in the licensing proceeding for the Seabrook

[1] Copies of NUREG-0737 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., Washington, DC.

nuclear power station over the timing of the installation of a control room safety parameters display system (CRSPDS).

Because, as the Appeal Board noted, the NUREG–0737 CRSPDS requirement in question provided for staff discretion in establishing the timing of installation, *see Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), ALAB–875, 26 NRC 251, 265 & n.52 (1987), this situation hardly provides a compelling example that TMI-related requirements are not given the same priority as other regulations. Moreover, this point is essentially irrelevant to the focal issue of whether all applicable NUREG–0737 requirements have been incorporated into the agency's regulations and orders. The Commission can only reiterate that this indeed is the case and, accordingly, it has determined that these TMI–2 related provisions of § 2.764 are no longer necessary. Nonetheless, to ensure there is no uncertainty over the litigation of TMI–2 related issues, as was indicated in the Statement of Considerations for the proposed rule, the Commission is issuing a policy statement that sets forth its updated policy on litigation of TMI–2 related issues. This policy statement is published elsewhere in this issue of the **Federal Register.**

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Review

This final rule contains no new or amended information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

As a result of recent judicial decisions affirming the legality of the Commission's existing rule governing the "immediate effectiveness" of initial decisions in reactor operating license proceedings, the Commission has decided not to take further action to revise the existing rule's procedures on effectiveness reviews. However, retention of the TMI–2 related provisions of the current immediate effectiveness rule is unnecessary and would be misleading to participants in NRC licensing proceedings. Those provisions are, therefore, being deleted.

The final rule thus constitutes the preferred alternative and the cost involved in its promulgation and application is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for the final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC certifies that this final rule does not have a significant economic impact upon a substantial number of small entities. Entities seeking reactor construction permits or operating licenses that would be subject to the TMI–2 related provisions that are being deleted from the existing immediate effectiveness rule would not fall within the definition of small businesses found in section 34 of the Small Business Act, 15 U.S.C. 632, the Small Business Act Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121, or the NRC's size standards published December 9, 1985 (50 FR 50241). Further, intervenors who probably would fall within the pertinent Small Business Act definition will not encounter a significant economic impact from the final rule. The previous incorporation in NRC regulations and orders of all applicable TMI action items and the forthcoming publication of a Commission policy statement on litigation of TMI-related issues are effective substitutes for the existing TMI–2 related provisions of the immediate effective rule being deleted by this final rule.

Backfit Analysis

This final rule does not modify or add to systems, structure, components, or design of a facility; the design approval or manufacturing license for a nuclear reactor facility; or the procedures or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this final rule.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 2:

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 3329). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2283); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.764, paragraphs (e)(1), (e)(2)(ii), and (f)(1) are revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

* * * * *

(e) * * *

(1) *Atomic Safety and Licensing Boards.* Atomic Safety and Licensing Boards shall hear and decide all issues that come before them, indicating in their decisions the type of licensing action, if any, which their decision would authorize. The Boards' decisions concerning construction permits shall not become effective until the Appeal Board and Commission actions outlined in paragraphs (e)(2) and (e)(3) of this section have taken place.

(2) * * *

(ii) In deciding these stay questions, the Appeal Board shall employ the procedures set out in 10 CFR 2.788. In addition to deciding the stay issue, the Appeal Board shall inform the Commission if it believes that the case raises issues on which prompt Commission policy guidance, particularly guidance on possible changes in present Commission regulations and policies, would advance the Board's appellate review. If the Appeal Board is unable to issue a decision within the sixty-day period, it should explain the cause of the delay to the Commission. The Commission shall thereupon either allow the Appeal Board the additional time necessary to complete its task or take other appropriate action, including taking the matter over itself. The running of the sixty-day period may not operate to make the Licensing Board decision effective. Unless otherwise ordered by the Commission, the Appeal Board shall conduct its normal appellate review of the Licensing Board decision after it has issued its decision on any stay request.

* * * * *

(f) * * *

(1) *Atomic Safety and Licensing Boards.* Atomic Safety and Licensing Boards shall hear and decide all issues that come before them, indicating in their decisions the type of licensing action, if any, which their decision would authorize. A Board's decision authorizing issuance of an operating license may not become effective insofar as it authorizes operating at greater than 5 percent of rated power until the Commission actions outlined below in paragraph (f)(2) of this section have taken place. Insofar as it authorizes operation up to 5 percent, the decision is effective and the Director shall issue the appropriate license in accordance with paragraph (b) of this section.

* * * * *

Dated at Rockville, MD, this 16th day of February 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-4167 Filed 2-22-89; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Conservatorships and Receiverships; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Part 611, January 12, 1989 (54 FR 1146). The final regulations to Part 611 relate to conservatorships and receiverships. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 23, 1989.

EFFECTIVE DATE: February 23, 1989.

FOR FURTHER INFORMATION CONTACT:

Eldon Stoehr, Regional Director, Northeast Region, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4251.

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

(12 U.S.C. 2252(a)(9) and (10)).

Dated: February 17, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-4175 Filed 2-22-89; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Parts 611, 612, 618 and 620

Organization; Personnel Administration; General Provisions; Disclosure to Shareholders; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Parts 611, 612, 618 and 620, December 15, 1988 (53 FR 50381). The final regulations to Parts 611, 612, 618 and 620 include conforming changes which implement the statutory amendments that eliminated the Farm Credit District boards and regulations regarding eligibility of candidates for bank and association director positions; standards for the director election process; mergers of System institutions; stockholder votes on the transfers of Farm Credit Bank authorities to Federal land bank associations; and other procedures and provisions for disclosure requirements relating to mergers and reorganizations. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 22, 1989.

EFFECTIVE DATE: February 22, 1989.

FOR FURTHER INFORMATION CONTACT:

James F. Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4475.

or

Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

Authority: 12 U.S.C. 2252(a) (9) and (10).

Dated: February 17, 1989.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 89-4178 Filed 2-22-89; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Parts 614

Loan Policies and Operations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Parts 614, January 12, 1989 (54 FR 1151). The final regulations under Part 614 relate to previously deferred portions of the borrower rights regulations on disclosures of changes in the effective interest rate. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 23, 1989.

EFFECTIVE DATE: February 23, 1989.

FOR FURTHER INFORMATION CONTACT:

Andrea J. Cali, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

(12 U.S.C. 2252(a) (9) and (10)).

Dated: February 17, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-4176 Filed 2-22-89; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Parts 614, 620 and 621

Loan Policies and Operations; Disclosure to Shareholders; Accounting and Reporting Requirements; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Parts 614, 620 and 621, January 12, 1989 (54 FR 1153). The final regulations to Parts 614, 620 and 621 address the content of the Federal Agricultural Mortgage Corporation's (FAMC) annual report, the examination of FAMC, and the authority of the Farm Credit System banks and associations to originate loans for sale to agricultural mortgage marketing facilities (certified facilities or poolers) or to act as certified facilities. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 23, 1989.

EFFECTIVE DATE: February 23, 1989.

FOR FURTHER INFORMATION CONTACT:

George D. Irwin, Assistant Deputy Director, Office of Financial Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4054.

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD 883–4444.

Authority: 12 U.S.C. 2252(a) (9) and (10).

Dated: February 17, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–4173 Filed 2–22–89; 8:45 am]

BILLING CODE 6705–01–M

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Part 615, January 12, 1989 (54 FR 1156). The final regulations to Part 615 govern the funding of Farm Credit System institutions by means of issuance of securities. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 23, 1989.

EFFECTIVE DATE: February 23, 1989.

FOR FURTHER INFORMATION CONTACT:

Larry W. Edwards,
Director,
Special Examination Division,
Office of Examination,
Farm Credit Administration,
1501 Farm Credit Drive,
McLean, Virginia 22102–5090,
(703) 883–4225.

or

James M. Morris,
Attorney,
Office of General Counsel,
Farm Credit Administration,
1501 Farm Credit Drive,
McLean, Virginia 22102–5090,
(703) 883–4020,
TDD (703) 883–4444.

Authority: 12 U.S.C. 2252(a) (9) and (10).

Dated: February 17, 1989.

David A. Hill,

Secretary Farm Credit Administration Board.

[FR Doc. 89–4174 Filed 2–22–89; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–207–AD; Amdt. 39–6148]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to certain Boeing Model 747 series airplanes, which currently require inspection of the flap tracks for cracks. This amendment requires more frequent visual inspection of flap tracks 1, 3, 6, and 8, and more detailed inspection procedures for determining that fastener holes are crack-free and corrosion-free. This amendment is prompted by reports of additional cracking instances, which indicate that the existing required inspections are not adequate. This condition, if not corrected, could result in failure of a flap track, which could lead to separation of the flap from the airplane and partial loss of controllability of the airplane.

EFFECTIVE DATE: March 8, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, ANM–120S; telephone (206) 431–1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On October 4, 1988, the FAA issued telegraphic AD T88–21–51, applicable to certain Boeing Model 747 series airplanes, which requires eddy current inspection of the most forward fail-safe bar fastener holes of the number 1, 3, 6, and 8 flap tracks within 75 landings. In addition, on September 16, 1988, the FAA issued Amendment 39–6038 (53 FR 37992; September 29, 1988), a revision to AD 88–16–03, applicable to the same airplanes, which requires ultrasonic inspection of flap track numbers 1 through 8 for cracks emanating from the first four fail-safe bar fastener holes on each side of the tracks (eight holes per track).

Since the issuance of those AD's, one operator reported finding a crack emanating from the number 2 fastener hole on a number 6 flap track only 75 landings after having accomplished the ultrasonic inspection required by the existing AD. The crack completely severed the inboard leg of the track's pi-shaped cross section. Metallurgical examination of the failed part indicated that the crack had developed very rapidly from a small corrosion pit and may not have been of a detectable length at the last inspection.

Another operator reported finding the lower flange severed on the outboard side of a number 3 flap track at the number 1 fastener hole location, 60 landings after the hole had been inspected in accordance with AD T88–21–51 and determined to be crack free and corrosion free. Metallurgical examination of the failed part indicated the crack originated at a corrosion pit and apparently a smaller precursor crack had been missed on the previous inspection.

Both of these cracks were found visually. Both of the operators involved make frequent use of the flaps 30 degree setting. The structural forces on the flaps are significantly higher when the 30 degree setting is used. The FAA is considering issuing an NPRM which would limit landing flaps to 25 degrees or less until terminating modifications are incorporated.

The FAA has determined from these recent occurrences that more frequent close visual inspections of the flap tracks 1, 3, 6, and 8 are necessary to ensure that an in-flight failure of the flap track will not occur, and that more detailed inspection procedures are necessary to determine that fastener holes are crack-free and corrosion-free.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988, which describes a procedure for close visual inspection of the forward end of the flap tracks, and a rework procedure acceptable for repairing small cracks. After such rework, inspection is still necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires close visual inspection of the forward end of the flap tracks 1, 3, 6, and 8 at intervals not to exceed five landings (15 landings if use of the flaps is restricted to 25 degrees or less). Eddy current inspections are required on all tracks, except those having a spliced-in end fitting. These inspections are to continue in accordance with a procedure approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, until the tracks are determined to have crack-free, corrosion-free fastener holes. Additionally, visual and ultrasonic inspections are required on all tracks.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 88–16–03, Amendment 39–5985 (53 FR 27956; July 26, 1988) as amended by Amendment 39–6038 (53 FR 37992; September 29, 1988), and telegraphic AD 88–21–51 issued on October 4, 1988, with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Alert Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988, certificated in any category, that have reworked or interim production flap tracks (part numbers identified in the service bulletin). Compliance required as indicated, unless previously accomplished.

To preclude additional flap track failures, accomplish the following:

A. Accomplish either paragraph A.1 or A.2, below, according to the compliance schedule indicated.

1. Accomplish A.1.a. through A.1.c., below:

a. Within five landings after the effective date of this AD, revise the limitations section of the FAA-approved Airplane Flight Manual (AFM) by adding the following instructions. This may be accomplished by inserting a copy of this AD into the AFM:

"Landing Flaps

Maximum landing flaps shall not exceed 25 degrees, unless deemed necessary for safe operation by the pilot. The pilot shall document each use of 30 degree flaps in the airplane log book."

b. Within 15 landings after the effective date of this AD, and thereafter at intervals not to exceed 15 landings, until paragraph B.2., below, is accomplished on the affected tracks, perform a close visual inspection of both sides of each flap track for cracks emanating from the first four fail-safe bar fastener holes of flap track numbers 1, 3, 6, and 8. (Borescope inspections, conducted in accordance with Boeing Alert Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988, or through the access hole in the forward end fairing, are acceptable.)

c. Within 10 landings after any use of 30 degree flaps conduct the inspection specified in paragraph A.1.b., above.

2. Within 15 landings after the effective date of this AD, and thereafter at intervals not to exceed 5 landings, until paragraph B.2., below, is accomplished on the affected track, perform a close visual inspection of both sides of each flap track for cracks emanating from the first four fail-safe bar fastener holes on each side of flap track numbers 1, 3, 6, and 8 (eight holes per track). (Borescope inspections, conducted in accordance with Boeing Alert Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988, or through the access hole in the forward end fairing, are acceptable.)

Note: Although 30 degree flaps are not prohibited in complying with paragraph A.2., it is recommended that 25 degree flaps be used whenever possible.

B. Within 75 landings after the effective date of this AD, remove the bolts from the first four fail-safe bar fastener holes on each side of the track (eight per track) of flap track numbers 1 through 8 (except tracks 4 and 5 with a spliced-in end fitting) and accomplish B.1. or B.2., below:

1. Inspect fastener holes for cracks, in accordance with the eddy current procedures identified in Boeing Alert Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988. If no cracks are found, prior to further flight, apply an organic corrosion inhibitor (LPS–3 or equivalent) to the fastener hole and reinstall serviceable fasteners using corrosion inhibiting grease. Repeat at intervals not to exceed 75 landings.

2. Verify that fastener holes are:

a. Corrosion-free, by using magnifying borescope inspection procedures described in the enclosure to Boeing Letter B–221T–89–247, dated January 24, 1989, entitled "Borescope Inspection of Flap Track Holes."

b. Crack-free, by using eddy current inspection procedures described in Boeing Alert Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988.

Repeat these inspections at intervals not to exceed 1,500 landings. Bolts are to be reinstalled as noted in paragraph B.1., above. Verification that fastener holes are crack-free and corrosion-free constitutes terminating action for the requirements of paragraph A., above, for that track. Any track, which on subsequent inspection is found to have developed corrosion in a fastener hole, must be inspected in accordance with paragraphs A. and B.1., above, until the condition is corrected.

C. For tracks inspected in accordance with paragraph B.2., above, within 300 landings after tracks have been found to be crack-free and corrosion-free, and at intervals thereafter not to exceed 300 landings, perform an

ultrasonic and close detailed visual inspection of both sides of the forward end of each track for cracks, with the fairing removed, in accordance with the procedures described in Boeing Alert Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988.

D. Within 150 landings after the effective date of this AD, unless accomplished within the last 150 landings, and thereafter at intervals not to exceed 300 landings, remove the fairing from the forward end of flap tracks numbers 4 and 5 with spliced-in end fittings, and perform an ultrasonic and close detailed visual inspection of both sides of the forward end of each track for cracks, in accordance with the inspection procedures described in Boeing Alert Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988.

E. Within the next 50 landings after August 15, 1988 (the effective date of AD 88–16–03, Amendment 39–5985), unless accomplished within the past 950 landings, and thereafter at intervals not to exceed 1,000 landings, visually inspect numbers 1 through 8 flap track webs for cracks extending from all fastener holes not inspected in accordance with the requirements of paragraphs A., B., C., or D., above. These visual inspections must be accomplished in accordance with the procedures described in Boeing Service Bulletin 747–57–2146, Revision 3, dated May 9, 1986.

F. Cracked tracks must be replaced or reworked prior to further flight in accordance with Boeing Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988, or Boeing Service Bulletin 747–57–2146, Revision 3, dated May 9, 1986.

G. Tracks which have had any of the first four fail-safe bar fastener holes reworked in accordance with Boeing Alert Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988, or in accordance with any other procedure approved by the FAA, are subject to the requirements of paragraphs A. and B.1., above, until compliance with paragraph B.2 is established.

H. Carriage of fifth engine is not permitted unless a close visual inspection, as described in paragraph A.1.b. or A.2., above, is conducted prior to the flight.

I. Replacement of any flap track with a flap track approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, constitutes terminating action for the inspection requirements of this AD for that flap track.

J. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

K. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 88–16–03, Amendment 5985, as amended by Amendment 30–6038, and AD T88–21–51.

This amendment becomes effective March 8, 1989.

Issued in Seattle, Washington, on February 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–4099 Filed 2–22–89; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 88–NM–164–AD; Amdt. 39–6147]

Airworthiness Directives; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CASA Model C–212 series airplanes, which requires modification of the bellcrank-to-control rod joints in the wing flap control system. This amendment is prompted by reports that failed bolts, lacking positive retention, may separate from the flap linkage. This condition, if not corrected, could lead to failure of the flap control system and asymmetric flap retraction.

EFFECTIVE DATE: April 3, 1989.

ADDRESSES: The applicable service information may be obtained from Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM–113; telephone (206) 431–1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to CASA Model C–212 series airplanes, which requires modification of the bellcrank-to-control rod joints in the wing flap control system, was published in the Federal Register on November 29, 1988 (53 FR 47969).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 41 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for parts is $2,200 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $168,960.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, CASA Model C–212 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

CASA: Applies to all CASA Model C-212 series airplanes, certificated in any category. Compliance required as indicated below, unless previously accomplished.

To prevent failure of the wing flap control system, accomplish the following:

A. Within 180 days after the effective date of this AD, modify the bellcrank-to-control rod joints in the wing flap control system in accordance with CASA Service Bulletin 212-27-22, Revision 3, dated May 20, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 3, 1989.

Issued in Seattle, Washington, on February 13, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-4100 Filed 2-22-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8241]

Extension of Time To File for Taxpayers Outside the United States and Puerto Rico

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides Temporary Income Tax Regulations relating to the extension of time to file federal income tax returns and pay any taxes owing for United States citizens and U.S. residents who are outside of the United States and Puerto Rico. These temporary regulations reflect changes to the current regulations provided by Notice 88-40 (issued by the IRS Public Affairs Office and not published in the **Federal Register**) and clarify existing rules.

EFFECTIVE DATE: These temporary regulations apply to federal income tax returns due after April 15, 1988.

FOR FURTHER INFORMATION CONTACT: Peter J. Hanley of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn: CC:LR:T (INTL-287-88)), (202-566-3499, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The temporary regulations contain no new reporting or recordkeeping requirements but merely move existing requirements to the new temporary regulations section and, thus, are not subject to the Paperwork Reduction Act (44 U.S.C. 3501), as amended.

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 6081 of the Internal Revenue Code.

Need for Temporary Regulations

Because of the need for immediate guidance regarding the circumstances under which the Internal Revenue Service will grant an extension of time to file federal income tax returns due after April 15, 1988, and pay any taxes owing thereon, under § 1.6081-2 of the regulations, it is impractical to issue these temporary regulations either with notice and public comment procedure under section 553(b) of title 5 of the United States Code, or under the effective date limitation of section 553(d) of Title 5.

Explanation of Provisions

Section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return required by this title or by regulations.

The regulations remove an obsolete reference to § 1.6073-4 of the regulations contained in § 1.6081-1(a). They also remove obsolete § 1.6081-2(b).

Section 1.6081-2(a) provides, in part, that United States citizens and residents traveling outside the United States and Puerto Rico are granted an extension of time to file federal income tax returns and pay any taxes owing. The temporary regulations remove this provision.

Section 1.6081-2(a) also provides an extension of time to file and pay for United States citizens residing outside the United States and Puerto Rico and for U.S. residents living outside the United States and Puerto Rico. The temporary regulations clarify what is meant by residing and living outside the United States and Puerto Rico.

Special Analysis

These rules are not major rules as defined in Executive Order 12991. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Therefore, these rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6) and a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Peter J. Hanley of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects

26 CFR Part 1

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and Recordkeeping requirements.

Adoption of amendments to the regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 1.6081-1 [Amended]

Par. 2. Paragraph (a) of § 1.6081-1 is amended by removing the fifth sentence.

§ 1.6081-2 [Redesignated as § 1.6081.4T]

Par. 3. Section 1.6081-2 is redesignated as § 1.6081-4T and is revised to read as follows:

§ 1.6081-4T Extensions of time in the case of certain partnerships, corporations and U.S. citizens and residents (temporary).

(a) *In general.* The rules in this paragraph apply to returns of income due after April 15, 1988. An extension of time for filing returns of income and for paying any tax shown on that return is hereby granted to and including the fifteenth day of the sixth month following the close of the taxable year in the case of:

(1) Partnerships which are required under paragraph (e)(2) of § 1.6031-1 to file returns on the fifteenth day of the fourth month following the close of the taxable year of the partnership, and which keep their records and books of account outside the United States and Puerto Rico;

(2) Domestic corporations which transact their business and keep their records and books of account outside the United States and Puerto Rico;

(3) Foreign corporations which maintain an office or place of business within the United States;

(4) Domestic corporations whose principal income is from sources within the possessions of the United States;

(5) United States citizens or residents whose tax homes and abodes, in a real and substantial sense, are outside the United States and Puerto Rico; and

(6) United States citizens and residents in military or naval service on duty, including non-permanent or short term duty, outside the United States and Puerto Rico.

(b) In order to qualify for the extension under this section, a statement must be attached to the return showing that the person for whom the return is made is a person described in paragraph (a) of this section.

(c) For purposes of paragraph (a)(5) of this section, whether a person is a United States resident will be determined in accordance with section 7701(b) of the Code. The term "tax home," as used in paragraph (a)(5), will have the same meaning which it has for purposes of section 162(a)(2) (relating to travel expenses away from home). If a person does not have a regular or principal place of business, that person's tax home will be considered to be his regular place of abode in a real and substantial sense.

(d) In order to qualify for the extension under paragraph (a)(6), the assigned tour of duty outside the United States and Puerto Rico must be for a period that includes the entire due date of the return.

(e) A person otherwise qualifying for the extension under paragraph (a)(5) or paragraph (a)(6) shall not be disqualified because he is physically present in the United States or Puerto Rico at any time, including the due date of the return.

(f) With respect to income tax returns due on April 15, 1988, an extension of time for filing a return of income and for paying any tax shown on that return is hereby granted to and including the fifteenth day of the sixth month following the close of the taxable year in the case of citizens or residents of the United States who are traveling outside the United States and Puerto Rico. A taxpayer will be considered to be traveling outside the United States and Puerto Rico only if the period of travel outside the United States and Puerto Rico is a period of at least fourteen days continuous travel that includes all of April 15, 1988. For returns due after April 15, 1988, no extension will be granted to taxpayers traveling outside the United States and Puerto Rico.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by removing from the table "§ 1.6081-2 * * * 1545-0148".

Par. 6. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6081-4T * * * 1545-0148".

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

January 13, 1989.

[FR Doc. 89-4047 Filed 2-22-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 181

[CGD 89-010]

Boating Safety; Information Pamphlet For Personal Flotation Devices

AGENCY: Coast Guard, DOT.

ACTION: Notice of grant of exemption.

SUMMARY: The Coast Guard is granting an exemption from Personal Flotation Device (PFD) pamphlet text and illustration requirements to manufacturers who are subscribers to Underwriters Laboratories, Inc. (UL) Listing Services for Marine Buoyant Devices, Buoyant Vests, and Buoyant Cushions. Starting March 1, 1989, these manufacturers would have to provide two information pamphlets with each PFD sold or offered for sale for use on recreational boats, in order to comply with both Coast Guard regulations and new PFD pamphlet requirements in the UL Standard for Marine Buoyant Devices (UL 1123). The Coast Guard is conducting a rulemaking to update its PFD pamphlet text and illustration requirements. This grant of exemption relieves PFD manufacturers of the burden of providing two different pamphlets while the Coast Guard conducts this rulemaking.

EFFECTIVE DATE: February 23, 1989.

ADDRESSES: A copy of UL 1123 PFD Pamphlet requirements and an example of a type III PFD pamphlet may be obtained by sending a self-addressed 8½" × 11" envelope with postage paid for 4 ounces to Commandant (G-NAB/12), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001 (or by calling the Coast Guard at (202) 267-1077 for a copy of the example pamphlet only).

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Office of Navigation Safety and Waterway Services (G-NAB/12), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-0979, between 8 a.m. and 3 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Section 181.703 of Title 33 CFR requires manufacturers of Coast Guard approved Personal Flotation Devices (PFDs) to provide an information pamphlet containing specified text and illustrations with each PFD sold or offered for sale for use on recreational boats. These pamphlets contain information to help a prospective purchaser determine which Type (I, II, III, IV, or V) PFD is most suitable for use in particular activities.

Several sections on manufacturer requirements in Part 160 of Title 46 CFR require inspection by a recognized laboratory for Coast Guard approval of PFDs. Underwriters Laboratories, Inc., is the only recognized laboratory currently designated in Part 160. New UL 1123 PFD pamphlet requirements will become effective on March 1, 1989, and will apply to subscribers to UL's Listing Services for Marine Buoyant Devices, Buoyant Vests, and Buoyant Cushions. These new requirements are different

from the requirements currently in 33 CFR Part 181. These PFD manufacturers, therefore, would have to provide two pamphlets with each PFD to meet the requirements of both the Coast Guard and Underwriters Laboratories, Inc.

The Coast Guard received a petition, on behalf of PFD manufacturers, for an exemption from §§ 181.703 and 181.705 of Title 33 CFR. The petitioner, Ms. Karla R. Evert of Stearns Manufacturing Company, P.O. Box 1498, St. Cloud, Minnesota, requested an exemption to allow PFD manufacturers to use pamphlets meeting the requirements of UL 1123 to satisfy the requirements of 33 CFR 181.703 and 181.705. The petitioner offered the following reasons to support the grant of exemption:

1. The new pamphlet provides the same basic information as is currently required in § 181.705, but in a much improved format, making it much more likely to be read and understood.

2. The new pamphlet corrects a number of inaccuracies in the present regulatory text.

3. The regulations governing Coast Guard approval of Personal Flotation Devices require PFDs to be UL listed and after March 1, 1989, UL will require the new pamphlet in order to be listed. If manufacturers provided both pamphlets, consumers would be confused and manufacturers would have to bear a needless expense.

The Coast Guard is currently conducting a rulemaking to revise and update the PFD pamphlet requirements in 33 CFR Part 181. A supplemental notice of proposed rulemaking will propose to incorporate by reference the new PFD Pamphlet requirements in UL 1123 instead of merely revising the existing text and illustration requirements in the CFR. Therefore, the Coast Guard considers it reasonable to allow use of PFD pamphlets meeting UL 1123, as equivalent to the text and illustrations requirements in § 181.705, until the Coast Guard can complete the rulemaking project.

In consideration of the foregoing, the Coast Guard finds that granting this exemption will not adversely affect boating safety. Therefore, pursuant to the authority contained in 46 U.S.C. 4305 and 49 CFR 1.46(n)(1), which authority has been delegated to me by the Commandant, an exemption from 33 CFR 181.703 and 181.705, to allow the use of pamphlets meeting PFD Pamphlet requirements in Underwriters Laboratories 1123, is hereby granted to manufacturers subject to the Instruction Pamphlet For Personal Flotation Devices regulations in Subpart G of Part 181 of Title 33 Code of Federal Regulations.

This exemption terminates on February 23, 1992 unless sooner superseded, rescinded, or otherwise terminated.

Dated: February 16, 1989.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-4194 Filed 2-22-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3525-9]

Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Good Engineering Practice-Stack Height Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This **Federal Register** notice approves the Good Engineering Practice-Stack Height (GEP-SH) and Dispersion Techniques revisions to sections 3 and 5 of the Regulations of the Arkansas Plan of Implementation (SIP) for Air Pollution Control. This GEP-SH SIP revision is intended to implement section 123 of the Clean Air Act, as amended, and Federal regulations at 40 CFR Part 51. It will enable the State to ensure that the degree of emission limitation required for the control of any air pollutant under its SIP is not affected by that portion of any stack height which exceeds GEP-SH or by any other dispersion technique.

EFFECTIVE DATE: This rule will become effective on March 27, 1989.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs at the EPA Region 6 office address listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the locations listed below. Persons wishing to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day. It is recommended that you telephone Bill Deese at (214) 655-7214 before visiting the Region 6 office.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Dallas, Texas 75202-0233.

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72219.

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Bill Deese, Air Programs Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655-7214 or (FTS) 255-7214.

SUPPLEMENTARY INFORMATION: On July 26, 1988 (53 FR 28023) EPA published a Notice of Proposed Rulemaking (NPR) proposing approval of the Good Engineering Practice-Stack Height (GEP-SH) and Dispersion Techniques revisions to sections 3 and 5 of the Regulations of the Arkansas Plan of Implementation (SIP) for Air Pollution Control. The revisions and the rationale for EPA's proposed approval were explained in the NPR. It will not be restated here because the rationale has not changed since the revision was submitted to EPA on July 1, 1987. No public comments were received on the NPR.

In the NPR, in the last paragraph on page 28023, EPA determined that the State had adopted 40 CFR 51.118 for application to its new source permitting program. As a result, section 5(f) of the Arkansas regulation implicitly requires that permits containing emission limitations based on GEP-SH in excess of formula height be submitted to EPA for review and approval, presumably as SIP revisions. Although the requirements for EPA review of any such permits is more administratively cumbersome than the Clean Air Act or EPA's regulations require, it is found acceptable. The State was asked to confirm EPA's interpretation of the regulation or to amend the regulation to reflect its true intent prior to final approval. The State, in a letter to EPA Region 6 dated September 7, 1988, confirmed EPA's interpretation of section 5(f) and notified EPA that the State did not intend to change the regulation at this time.

The EPA's stack-height regulations were challenged in NRDC vs. Thomas, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

2. Dispersion credit for sources originally designed and constructed with

merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and

3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

Although the EPA generally approves Arkansas' stack height rules on the grounds that they satisfy 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in NRDC v. Thomas, 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the NRDC remand modifies the July 8, 1985, regulations, the EPA will notify the State of Arkansas that its rules must be changed to comport with the EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Arkansas and source owners or operators.

Final Action: EPA is approving a revision to the Arkansas State Implementation Plan (SIP) which adds the Arkansas Good Engineering Practice Stack Height (GEP-SH) Regulations to the Arkansas SIP. The State has added its GEP-SH Regulations to sections 3 and 5 of its Regulations of the Arkansas Plan of Implementation for Air Pollution Control.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Note.—Incorporation by reference of the State Implementation Plan for the State of Arkansas was approved by the Director of the Federal Register on July 1, 1982.

Date: February 10, 1989.

Robert E. Layton, Jr., P.E.,

Regional Administrator

PART 52—[AMENDED]

40 CFR Part 52, Subpart E, is amended as follows:

Subpart E—Arkansas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.170 is amended by adding paragraph (c)(26) to read as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

(26) A revision to the Arkansas Plan of Implementation for Air Pollution Control, as adopted by the Arkansas Commission on Pollution Control and Ecology on May 22, 1987, was submitted by the Governor of Arkansas on July 1, 1987. This revision adds the definitions and dispersion technique regulations required to implement the Federal stack height regulations.

(i) Incorporation by reference. (A) Sections 3(r), 3(s), 3(t), 3(u), 3(v), 3(w), 3(x), 3(y), 5(f), and 5(g) of the Arkansas Plan of Implementation for Air Pollution Control as adopted by the Arkansas Commission on Pollution Control and Ecology on May 22, 1987.

(ii) Additional material—None.

[FR Doc. 89–4021 Filed 2–22–89; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[FRL–3523–2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In a July 3, 1985 **Federal Register** (50 FR 27462), supplemental notice of proposed rulemaking, USEPA proposed to disapprove several revisions to the Illinois State Implementation Plan (SIP) for ozone. These SIP revisions request extended compliance schedules for Arvey Corporation (Arvey), Moore American Graphics (Moore American), and Meyercord Company (Meyercord). In today's Final Rulemaking, USEPA is disapproving these SIP revisions, because the State has not demonstrated that these compliance schedules are as expeditious as practicable.

EFFECTIVE DATE: This final rulemaking becomes effective on March 27, 1989.

ADDRESSES: Copies of this SIP revision, and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for seven laminators and coaters operated by Arvey in Chicago, Illinois. This revision is in the form of a February 10, 1983, Opinion and Order of the Illinois Pollution Control Board (IPCB), PCB 82–9. This Opinion and Order grants a variance from the existing SIP requirements until December 31, 1984, and provides an enforceable compliance schedule under State law.

On May 27, 1983, IEPA submitted a proposed revision to its ozone SIP for three laminators and four coaters operated by Moore American in Bridgeview, Illinois. This revision is in the form of an April 12, 1983, Opinion and Order of the IPCB, PCB 82–1. This Opinion and Order grants a variance from the existing SIP requirements until December 31, 1983, and provides an enforceable compliance schedule under State law.

On April 20, 1983, IEPA submitted a proposed revision to its ozone SIP for pressure sensitive elastomeric films, mylar polyester on silicone release paper, and protective film overcoats with either heat reactive or pressure sensitive adhesives applied by Meyercord at its facility in Chicago, Illinois. This revision is in the form of a March 10, 1983, Opinion and Order of the IPCB, PCB 82–53. This Opinion and Order grants a variance from the existing SIP requirements until January 31, 1986, and provides an enforceable compliance schedule under State law.

Under the existing federally approved SIP, each coating line unit for the companies listed above is subject to the emission control requirements contained in Rule 205(n)(1)(C) of Chapter 2: Air Pollution of the IPCB Rules and Regulations. Rule 205(n)(1)(C) limits volatile organic compound (VOC) emissions to 2.9 pounds of VOC per

gallon. Final compliance was required by December 31, 1982.

These sources are all located in the greater Chicago urban area, which was granted an extension until December 31, 1987, to attain the ozone national ambient air quality standards. USEPA may approve compliance date extensions for sources in such an area, if the State demonstrates that the compliance date meets the requirements of USEPA's policy on compliance date extensions.

In a March 20, 1984, Federal Register (49 FR 10277), USEPA proposed to disapprove these proposed SIP revisions because the Illinois ozone SIP lacked an approvable attainment demonstration for the Chicago nonattainment area. The attainment demonstration contained in the State's 1982 ozone SIP was initially proposed for disapproval in the February 3, 1983, Federal Register (48 FR 5110). (Subsequently, on August 15, 1984 (49 FR 5110), USEPA proposed to approve the State's revised 1982 SIP attainment demonstration. USEPA reproposed disapproval of the Illinois ozone plan on July 14, 1987, (52 FR 26404)) and on October 17, 1988 (53 FR 40415), USEPA took final rulemaking action to disapprove the State plan.

In response to USEPA's March 20, 1984, Notice of Proposed Rulemaking, IEPA commented that the reasons advanced by USEPA for disapproval of the proposed compliance schedule changes in the March 20, 1984, Notice of Proposed Rulemaking no longer existed, because Illinois had submitted an approvable 1982 Ozone SIP attainment demonstration. IEPA commented that USEPA should, therefore, approve the proposed compliance date extension, without reproposal.

If, however, there were alternative grounds for disapproval not stated in the March 20, 1984, Notice, the State commented that USEPA should repropose in a rulemaking which identified and addressed these grounds.

On July 3, 1985 (50 FR 27462), USEPA published a supplemental notice of proposed rulemaking on Arvey, Moore American and Meyercord, which identifies alternative grounds for disapproval which were not discussed in the earlier proposed rulemaking. In the July 3, 1985, notice USEPA proposed to disapprove all three facilities because the State did not demonstrate that their compliance schedules were as expeditious as practicable.

During the July 3, 1985, 30-day public comment period, USEPA received one comment from the State with three major concerns.

IEPA's Comment

The basis for USEPA's proposed disapproval of the extended compliance schedule for Moore American is its determination that the Company's compliance plan (reformulation to low solvent coatings) is not as expeditious as practicable. (50 FR 27463.) IEPA has commented that on June 27, 1985, the IPCB entered into a new order extending the variance which is the basis for the SIP revision for Moore American, to December 31, 1985. The Opinion and Order PCB 83–241 and the extension is relevant to the present proposed rulemaking, insofar as Moore American has now apparently decided to install a solvent recovery system, which it expects to be operational by December 31, 1985. The details of this system and Moore American's intentions are contained in the opinion of the Board in PCB 83–241, in excerpts from the hearing transcripts, and in copies of letters from Moore American to the supplier of the solvent recovery system. It is IEPA's understanding that Moore American has entered into a contract for the solvent recovery system and that the system will be completely operational by January 1, 1986. In light of the installation of a solvent recovery system by Moore American, IEPA urges USEPA to reconsider its proposed disapproval and finally approve Moore American's variance as extended. The variance extension and supporting material were formally submitted to USEPA on August 28, 1985, as a separate SIP revision.

USEPA's Response

Installation of a solvent recovery system by December 31, 1985, does not demonstrate that Moore's low solvent conversion program had been proceeding as expeditiously as practicable. Additionally, IEPA's comment does not appear to be directly applicable to the disapproval USEPA is issuing today, because it involves a compliance date extension 2 years longer than the SIP revision which USEPA is disapproving today. USEPA will evaluate Illinois, revised compliance schedule as a separate SIP revision.

IEPA's Comment

The IEPA is concerned about the length of time taken by USEPA to act on SIP revisions, and particularly State variances from RACT VOC rules. As noted in the July 3, 1985, notice, Illinois submitted the SIP revisions for Arvey, Meyercord and Moore American in 1983. USEPA first proposed to disapprove these revisions in March 1984. IEPA interprets the Clean Air Act as requiring the USEPA to act on SIP revisions within the 4-month deadline provided in section 110(a)(2); this interpretation has also been suggested by two Circuit Courts of Appeal.

USEPA's policy regarding the review of SIP revision submittals from a State is set forward in an Agency document dated January 1985 and entitled: Processing Procedures for SIP Revisions for Part 52; Part 62 111(d) Plans; and Part 81 Redesignations. This document outlines USEPA's internal process for rulemaking on SIPs and revisions; it provides for more than 4 months for USEPA rulemaking. USEPA has concluded that SIP revisions under § 110(a)(3) are not subject to the 4 month review under § 110(a)(2).

USEPA has concluded as a legal matter that the section 110(a)(2) reference to SIP review within 4 months applies only to initial SIP submittals and does not apply to SIP revisions. USEPA approves SIP revisions under section 110(a)(3) which does not contain any time limitation. Further, IEPA's comments on this issue are moot now that USEPA is taking final action on this SIP revision.

IEPA's Comment

The question of timeliness of USEPA's rulemaking action on SIP revisions is also tied into another concern of the IEPA. Illinois is very concerned about USEPA's practice, as exemplified by the three SIP revisions at issue here, of taking enforcement action while variances (SIP revisions) are pending which could resolve the matter or which could, after final action, be challenged in the Court of Appeals. IEPA believes that USEPA's practice, especially where USEPA takes so long to act on SIP revisions, deprives sources of their right of appeal and is disruptive of the State-Federal relationship.

USEPA's Response

SIP revisions are not resolutions of enforcement actions. Until USEPA takes final rulemaking to approve a revision to a SIP, the applicable SIP is the one that has previously been approved and applies to a source. USEPA will continue to enforce this applicable SIP whenever it is violated. Those sources that have complied with the SIP in good faith are entitled to rely on USEPA's enforcement of the SIP against the sources that choose not to comply or have failed to challenge the SIP when it was appropriate to challenge it. A source has the opportunity to challenge a SIP rule when the State adopts it and again when USEPA takes final action on

the rule, if it believes the rule is somehow improper.

Compliance Date Extension Policy

A detailed discussion of USEPA's rationale for proposing disapproval of compliance date extensions, and of the Clean Air Act provisions and USEPA policy related to compliance date extensions generally appears in Appendix A of the proposed rulemaking published on November 8, 1988 at 53 FR 45103. That Appendix A discussion reiterates that even under a compliance date extension compliance should be expeditious. The State has not demonstrated that these compliance date extensions are expeditious. The State has not provided any information indicating that similar sources have been unable to comply in a timely fashion. In addition, USEPA policy also requires the timely attainment and maintenance of the ozone standard and, where relevant, "Reasonable Further Progress" (RFP) towards timely attainment. This second criterion is the criterion which USEPA has been using throughout its review of these extension requests. This criterion has been addressed in one or more of USEPA's technical support documents dated September 14, 1983, May 10, 1984, May 16, 1984, September 13, 1985, and November 29, 1985. Because the basis for disapproval discussed in the July 3, 1985 proposal still remains, USEPA is disapproving these revisions on the grounds given in that proposal.

Final Action

USEPA disapproves the final SIP revisions for Arvey, Moore American, and Meyercord because the proposed revisions do not conform with USEPA's compliance date extension policy, and because the State has not demonstrated that this compliance schedule is as expeditious as practicable.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Under section 307(b)(1) of the Act Petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Carbon monoxide, Hydrocarbons.

Dated: February 10, 1989.

Jack Moore,

Acting Administrator.

[FR Doc. 89-4022 Filed 2-22-89; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[FRL-3525-8]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Visibility Protection; Long-Term Strategy and Implementation Control Strategies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves the general plan provisions and long-term strategy for visibility in a revision to the Texas State Implementation Plan (SIP). This action is a result of rulemaking on November 24, 1987 (52 FR 45132), in which EPA disapproved SIPs of States which failed to comply with the provisions of 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy). Additional details are discussed in the proposed rulemaking on March 12, 1987 (52 FR 7802).

The Governor of Texas submitted a SIP Revision for Visibility Protection on November 18, 1987. Supplemental information was submitted on February 17, and June 8, 1988. Review of the SIP revision indicated that Texas has met the criteria of 40 CFR 51.302 and 51.306. Consequently, this notice also revokes the November 24, 1987, Federally promulgated plan for Texas.

DATES: This action will become effective on April 24, 1989 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief (6T-AN), SIP/NSR Section, Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Dallas, Texas 75202-2733.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460.

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Dr. John Crocker, Air Programs Branch, SIP/NSR Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, telephone (214) 655-7214 or (FTS) 255-7214. Reference Docket File Number TX-88-3.

SUPPLEMENTARY INFORMATION:

Background

A. Regulatory Requirements and Litigation Challenges

Section 169A of the Clean Air Act, 42 U.S.C. 7491, sets as a national goal "* * * the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." Section 169A requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. "Mandatory Class I Federal areas" are certain national parks, wildernesses, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400 through 81.437. Section 169A specifically requires EPA to promulgate regulations requiring certain States to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 FR 80084, codified at 40 CFR 51.300 *et seq.* In broad outline, the visibility regulations require 36 States listed in § 51.300(b) to (1) coordinate SIP development with the appropriate Federal land managers (FLMs), (2) develop a program to assess and remedy visibility impairment from new and existing sources, (3) develop a long-term (10 to 15 years) strategy to assure reasonable progress toward the national goal, (4) develop a visibility monitoring strategy to collect information on visibility conditions, and (5) consider in all aspects of visibility protection any "integral vistas" identified by the end of 1985 by the FLM's as critical to the visitor's enjoyment of the Class I areas. The regulations required the States to submit to EPA their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified at 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility

regulations. In March 1981, the Court stayed the litigation pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs.

B. Settlement Agreement

A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific schedule. It required EPA to promulgate Federal Implementation Plans (FIPs) for visibility in States where SIPs are deficient with respect to the 1980 visibility regulations. Specifically, the first part of the agreement required EPA to propose and promulgate FIPs which cover the monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307. The EPA proposed such plan revisions for 34 States (including Texas) on October 23, 1984, at 49 FR 42670. Texas submitted its Part I Plan for NSR on December 11, 1985. EPA published a Notice of Delegation of Authority for Visibility NSR under the Federal Prevention of Significant Deterioration (PSD) program on November 4, 1986 (51 FR 40072), since it met the requirements of the 1980 visibility NSR regulations, 40 CFR 51.307. Texas did not submit a visibility monitoring strategy in its Part I plan. Consequently, EPA promulgated a Federal monitoring plan in the July 12, 1985, Federal Register (50 FR 28544).

The second part of the settlement agreement required EPA to determine the adequacy of the SIPs to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (40 CFR 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.306). The settlement agreement required EPA to propose and promulgate FIPs to remedy any deficiencies on a specified schedule.

On January 23, 1986, at 51 FR 3046, EPA preliminarily determined the SIPs of 32 States were deficient with respect to the remaining visibility provisions.

A revised settlement agreement required EPA to propose and promulgate FIPs to address the deficiencies relating to the general plan requirements and long-term strategies and allowed EPA to defer proposing and promulgating FIPs to remedy deficiencies related to impairment which the Federal land managers (FLMs) have certified to EPA. As currently revised, the agreement allows EPA until August 31, 1989, to propose remedies for existing impairment in certain of the affected areas. See 53 FR 35956 (September 15, 1988).

On March 12, 1987, at 52 FR 7802, EPA proposed to disapprove the SIPs of 32 States (including Texas) for failing to meet the general plan and long-term strategy requirements of 40 CFR 51.302 and 51.306. There, EPA proposed that control strategies to remedy existing impairment were unnecessary in the SIPs for 28 States (including Texas) and deferred a decision on the necessity of best available retrofit technology (BART) in four States (Arizona, Maine, Minnesota, and Utah).

The States were given the opportunity to avoid Federal promulgation of the FIPs if they submitted SIP revisions to EPA by August 31, 1987. Three States (Georgia, Florida, and Kentucky) met this deadline. Several States (including Texas) submitted draft or final SIPs after the August 31 date. The settlement agreement required EPA to promulgate FIPs for States which failed to meet the submittal deadline. Therefore, on November 24, 1987, at 52 FR 45132, EPA promulgated FIPs for 29 States (including Texas) to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and 51.306.

C. Today's Action

On November 18, 1987, the Governor of Texas submitted a Part II SIP Revision for Visibility Protection to meet the visibility general plan requirements and long-term strategies. Supplemental information was submitted on February 17, and June 8, 1988. The SIP revision is entitled "State Implementation Plan Revisions for Visibility Protection in Class I Areas: Phase I, September 18, 1987." EPA has reviewed the State's submittal and developed an evaluation report.[1] The report concludes that the Texas SIP revision meets all of the requirements for a Part II Visibility Protection Plan as outlined in 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy). This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 office. Today's action approves the Texas SIP revision as meeting the Part II Visibility Protection Plan requirements of 40 CFR 51.302 and 51.306 and the criteria discussed in 52 FR 7802. Today's action also revokes the FIP promulgated for Texas on November 24, 1987, at 52 FR 45132.

Texas has two mandatory Class I areas: Big Bend National Park, and Guadalupe Mountains National Park. No other Class I areas currently exist in the State. The SIP commits the State to visibility protection consistent with the Clean Air Act to be afforded within the national park boundaries. The SIP is to be reviewed every three years and revised as necessary.

Requirements

A. General Plan Requirements

The visibility regulations provide general plan requirements for the visibility SIPs. Section 51.302 sets specific State (and EPA in lieu of States) and FLM coordination requirements which must occur when developing a SIP. The general plan requirements of § 51.302(c) require that the SIPs include:

1. An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal;

2. Emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources;

3. Provisions to protect integral vistas identified pursuant to § 51.304;

4. Provisions to address any existing impairment certified by the FLM; and

5. A long-term (10–15 years) strategy for making reasonable progress toward the national goal.

(See 52 FR 7803 and 52 FR 45133 for further discussion of the general plan requirements and the process for developing control strategies to remedy existing impairment.)

The regulations require the State to adopt control strategies only to remedy impairment which has been reasonably attributed to a specific source or group of sources.

B. Long-Term Strategy

The regulations require that the long-term strategy be a 10 to 15-year plan for making reasonable progress toward the national goal. The long-term strategy must cover any existing impairment that the FLM certified and any integral vista that the FLMs have declared at least 6 months before plan submission. A long-term strategy must be developed which covers each Class I area within the State and each Class I area in another State that may be affected by sources within the State. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLMs. The strategy must state with reasonable specificity why it is

[1] Evaluation Report for the Texas Part II Visibility Protection Plan in Mandatory Class I Federal Areas, October 1988.

adequate for making reasonable progress toward the national goal. The long-term strategy and SIP must provide for the review of the impact of new sources (see § 51.307). The State must consider as a minimum the following six factors in the long-term strategy:

1. Emission reductions due to ongoing air pollution control programs;
2. Additional emission limitations and schedules for compliance;
3. Measures to mitigate the impacts of construction activities;
4. Source retirement and replacement schedules;
5. Smoke management techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes; and
6. Enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not addressed in developing the long-term strategy.

The State must commit to periodic review of the SIP on a schedule not less frequent than every 3 years. A periodic report must be developed in consultation with the FLMs and must contain the following:

1. Progress achieved in remedying existing impairment;
2. The ability of the long-term strategy to achieve reasonable progress toward the national goal;
3. Any change in visibility conditions since the last report or since plan approval;
4. Additional measures, including the need for SIP revisions, that may be necessary to achieve progress toward the national goal;
5. The progress achieved in implementing BART and meeting other schedules laid out in the long-term strategy;
6. The impact of any exemption granted under § 51.303; and
7. The need for BART to remedy existing impairment in an integral vista declared since plan approval.

C. Integral Vistas

Where the FLM has adopted an integral vista under § 51.304, the regulations require the State to (1) analyze for BART any facility where impairment in an integral vista has been reasonably attributed to that facility, (2) consider any integral vistas established 12 months prior to SIP submittal in its long-term strategy, and (3) coordinate with the FLMs on any permit application under the Prevention of Significant Deterioration (PSD) program where the proposed facility or modification may affect visibility in an integral vista. The FLM identified only one integral vista, and that one is located in Maine (see 46 FR 22707). Therefore, EPA proposed to disapprove only the State of Maine's SIP for failing to provide for the protection of these vistas. Thus, the visibility protection plan requirements for integral vistas (§§ 51.302 through 51.307) are applicable only for Maine.

D. Federal Remedy

On November 24, 1987, at 52 FR 45132, EPA disapproved the SIPs of 29 States (including Texas) for failing to comply with the provisions in EPA's existing regulations for visibility protection in mandatory Class I Federal areas dealing with impairment which can be reasonably attributed to a source. EPA also incorporated Federal implementation plans into the SIPs of these States to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and 51.306. These actions were proposed on March 12, 1987, at 52 FR 7802 and are in accordance with the settlement agreement with the EDF.

State Submittal

A. General Plan Requirements/FLM Coordination

Under section 165(d) of the Clean Air Act, the FLM is given an affirmative responsibility to protect air quality related values, including visibility, in lands within a Class I area. The FLM must maintain these areas consistent with congressional land use goals. The visibility regulations (40 CFR 51.302) allow the FLM the opportunity to identify visibility impairment and to recommend elements for inclusion in the long-term strategy.

The State of Texas has met the visibility general plan requirements of § 51.302. The State has accorded the FLM opportunities to participate and comment on its visibility SIP revision. Comments by the FLM were submitted to the State during the State's public notice period, and they were considered by the State and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program.

The Texas Part II Visibility Protection Plan incorporated into the SIP revision the following: (1) A determination that there is no existing visibility impairment that is reasonably attributable to specific sources; (2) a discussion of the SIP elements and how each element of the plan relates to the national goal; and (3) a long-term (10–15 years) strategy. Since no existing reasonably attributable impairment has been identified, all elements of the plan are intended to prevent future impairment of visibility. If existing reasonably attributable impairment is later identified, the State will revise its plan to remedy the impairment. Currently, there are no integral vistas in Texas.

B. Long-Term Strategy

The Texas visibility long-term strategy section included the following: (1) Coordination with the FLM; (2) consideration of the six required factors for a long-term strategy; (3) a provision for the review of the impact of new sources; and (4) provisions for periodic review (i.e., every 3 years) of the plan, which review must include consultation with the Federal land manager and a report to the public and to EPA on progress toward the national goal.

C. EPA Evaluation Summary

These provisions meet EPA criteria and EPA is approving this phase of the plan. EPA has reviewed the State's submittal and developed an evaluation report. The report shows that the Texas SIP revision meets all of the requirements for a Part II Visibility Protection Plan as specified in 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy).

Final Action

By this notice, EPA is approving the Texas SIP revision as meeting the Part II Visibility Protection Plan requirements of 40 CFR 51.302 and 51.306 and the criteria discussed in 52 FR 7802. (One should reference that March 12, 1987, notice for additional information.) The SIP commits to a 3 year periodic review and making any changes deemed necessary. The SIP, therefore, has established the commitment to review the visibility requirements listed in 40 CFR Part 51 Subpart P—Protection of Visibility. This SIP revision remedies the deficiencies for all the remaining visibility requirements of Subpart P (i.e., §§ 51.302 and 51.306) as identified in the November 24, 1987 (52 FR 45132), Federally promulgated plan. Consequently, this notice also revokes that Federal promulgation for Texas.

EPA has reviewed these revisions to the Texas SIP and is approving them as submitted. This action is taken without prior proposal because the changes are non-controversial and EPA anticipates no adverse comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days of publication that someone wishes to

submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

Date: February 10, 1989.

Robert E. Layton, Jr.,

Regional Administrator.

PART 52—[AMENDED]

40 CFR Part 52, Subpart SS, is amended as follows:

Subpart SS—Texas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2270 is amended by adding paragraph (c)(66) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(66) Part II of the Visibility Protection Plan was submitted by the Governor on November 18, 1987. This submittal includes a visibility long-term strategy and general plan provisions as adopted by the Texas Air Control Board on September 18, 1987.

(i) Incorporation by reference.

(A) Revision entitled, "State Implementation Plan Revisions for Visibility Protection in Class I Areas: Phase I, September 18, 1987" (including Appendices A and B).

(B) Texas Air Control Board Order No. 87–15, adopted September 18, 1987.

(ii) Additional material.

(A) None.

3. Section 52.2304, paragraph (c) *Long-term strategy* is removed.

§ 52.2304 Visibility protection. [Amended]

[FR Doc. 89–4024 Filed 2–22–89; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 62

[FRL–3526–7; MS–012]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Mississippi; Total Reduced Sulfur Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 30, 1987, the State of Mississippi submitted its plan for the control of total reduced sulfur (TRS) for kraft pulp mills. The plan became effective in the State on November 1, 1987. This plan for TRS from kraft pulp mills was adopted pursuant to the requirements of section 111(d) of the Clean Air Act. Today, EPA is approving the TRS plan for Mississippi.

EFFECTIVE DATE: This action is effective March 27, 1989.

ADDRESSES: Copies of the State's submittal may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Mississippi Department of Natural Resources, Bureau of Pollution Control, Post Office Box 10385, Jackson, Mississippi 39205.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On October 30, 1987, the State of Mississippi submitted to EPA a plan to control total reduced sulfur emissions (TRS) from kraft pulp mills. On September 7, 1988 (53 FR 34549), EPA proposed approval of the Mississippi TRS plan. No comments were received on the proposed action. This plan was developed to meet the requirements of section 111(d) of the Clean Air Act. Under section 111(d), EPA established procedures whereby states submit plans to control existing sources of designated pollutants. Designated pollutants are defined as pollutants which are not included on a list published under sections 108(a) (Air Quality Criteria and Control Techniques) of the Clean Air Act, but to which a standard of performance for new sources applies under section 111. TRS is such a pollutant. Under section 111(d), emission standards are to be adopted by the states and submitted to EPA for approval. The standards limit the emissions of designatedpollutants from existing facilities which, if new, would be subject to the new source performance standards (NSPS) set forth at 40 CFR Part 60. Such facilities are called designated facilities.

The procedures under which states submit these plans to control existing sources are defined in Subpart B of 40 CFR Part 60. According to Subpart B, the states are required to develop plans within federal guidelines for the control of designated pollutants. EPA will publish guideline documents for development of state emission standards along with the promulgation of any NSPS for a designated pollutant. These guidelines apply to designated pollutants and include information such as a discussion of the pollutant's effects, description of control techniques and their effectiveness, costs and potential impacts. Also as guidance for the states, recommended emission limits and times for compliance are set forth and control equipment which will achieve these emission limits is identified.

In Subpart B, two types of designated pollutants are discussed. One type of designated pollutant may cause or contribute to the endangerment of public health. It is referred to as a health-related pollutant. The other type of designated pollutant is a welfare-related pollutant, for which adverse effects on public health have not been demonstrated.

For welfare-related pollutants such as TRS, states have the option of balancing emission guidelines, times for compliance, and other information provided in a guideline document against other factors of public concern in the establishment of emission standards, compliance schedules and variances, as long as the guideline document and Subpart B public hearing information are considered and all the other requirements of Subpart B are met. Therefore, states have greater flexibility in establishing plans for the control of TRS. Factors other than technology and

costs can be considered in developing a TRS plan.

In Mississippi, four draft pulp mills are affected by this plan for existing facilities: International Paper Company, Moss Point; International Paper Company, Natchez; International Paper Company, Vicksburg; and Georgia-Pacific Corporation, Monticello.

The guidance document, *Kraft Pulping, Control of TRS Emissions from Existing Mills*, EPA–450/2–76–003b, was published by EPA in March 1979. This document was used by Mississippi in the development of emission limits for TRS emissions from affected facilities except for TRS emissions from smelt dissolving tanks and recovery boilers. The emission limit for smelt dissolving tanks was set to correspond to the New Source Performance Standard (NSPS) (40 CFR Part 60, Subpart BB, Kraft Pulp Mills) smelt dissolving tank emission limit because of the inconsistency of having newer plants meet a less restrictive NSPS emission limit than the guidance document emission limit for existing plants. Also, the emission limit for recovery boilers was set higher than the rate recommended in the guidance document for three mills, International Paper's Natchez and Vicksburg mills and Georgia Pacific's Monticello mill. This was based on economic factors. Using economic factors from the guidance documents for an acceptable operating cost for annual tons of pulp produced, the State concluded that for the two International Paper mills and the Georgia Pacific mill, it would be an undue economic burden to meet the EPA-recommended emission rate for recovery boilers.

Final Action

Based on the foregoing, EPA hereby approves the Mississippi TRS plan. This action is effective March 27, 1989.

For further information on EPA's analysis, the reader may consult a Technical Support Document which contains a detailed review of the technical justification, including the economic impact. This is available at the EPA Region IV address given above.

Under section 307(b)(1) of the Act petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 62

Air pollution control, Intergovernmental relations, Paper and paper products industry.

Dated: February 10, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator.

Part 62 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 62—[AMENDED]

Subpart Z—Mississippi

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 62.6100 is amended by adding paragraphs (b)(2) and (c)(3) to read as follows:

§ 62.6100 Identification of plan.

* * * * *

(b) * * *

(2) Control of total reduced sulfur emissions from existing kraft pulp mills, submitted on October 30, 1987.

(c) * * *

(3) Kraft pulp mills.

3. An undesignated center heading and § 62.6122 are added to Subpart Z to read as follows:

Total Reduced Sulfur Emissions From Kraft Pulp Mills

§ 62.6122 Identification of sources.

The plan applies to existing facilities at the following kraft pulp mills:

(a) Georgia-Pacific Corporation, Monticello.

(b) International Paper Company, Moss Point.

(c) International Paper Company, Natchez.

(d) International Paper Company, Vicksburg.

[FR Doc. 89–4134 Filed 2–22–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[FCC 89–38]

Amateur Radio Service; Identification Procedure for Amateur Stations Operating Under a Reciprocal Permit

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action clarifies the station identification procedure for amateur stations operated by aliens pursuant to the authority conferred by a reciprocal permit. The rule amendment is necessary so that there will be greater precision in the provisions of the rule. The rule change will facilitate compliance because of its clarity and precision.

EFFECTIVE DATE: April 17, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, adopted February 1, 1989, and released February 14, 1989. The complete text of this Commission action, including the rule amendment, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this Memorandum Opinion and Order, including the rule amendment, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. On May 24, 1988, the Commission released an Order, 3 FCC Rcd 2988 (1988), which rewrote a station identification rule to require that an alien operating under a reciprocal permit give the United States letter-numeral designating the general location of the alien's amateur station first, followed by the alien's station call sign. David B. Popkin requested that the Commission reconsider its Order by making the subject rule, § 97.313, 47 CFR 97.313, more precise.

2. The petitioner requested that the word "slant" be added to the rule as another option to describe the slant mark "/" during telephony transmissions and that the rule specifically state that the identification be made in the English language. The petitioner also requested other minor changes in the rule's wording.

3. The Commission granted the petitioner's suggestions, with modifications, but declined to include the requirement for the use of the English language in the telephony identification procedure on the ground that that requirement was currently

contained in § 97.84 of the Commission's Rules, 47 CFR 97.84, and need not be repeated in § 97.313. A cross-reference, however, to that section has been included in § 97.313. The Commission also said that any suitable word that denotes the slant mark "/" during radiotelephony emission transmissions may be used.

4. The amended rule is set forth at the end of this document.

5. The rule amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements and will not increase or decrease burden hours on the public.

6. The amended rule is issued under the authority of 47 U.S.C. sections 154(i) and 303(r).

List of Subjects in 47 CFR Part 97

Aliens, Amateur radio, Call signs, Radio.

Donna R. Searcy,

Secretary.

Amended Rule

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.313 is revised to read as follows:

§ 97.313 Station identification

When the station is operating under a reciprocal permit, the call sign transmitted in the identification procedure required by § 97.84 must be that issued to the station by the licensing country, preceded by the appropriate United States letter-numeral amateur station call sign prefix designating the regional location of the station, separated by "/" (the slant mark) on other than telephony emission transmissions and by any suitable word that denotes the slant mark during telephony emission transmissions. At least once during each intercommunication, the identification announcement must include the geographical location as nearly as possible by city and state, commonwealth or possession.

[FR Doc. 89–3972 Filed 2–22–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket Number 87-09; Notice 6]

RIN: 2127-AC42

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the provisions of the odometer disclosure regulation that require the transferor of a motor vehicle to disclose to his transferee, in writing, information concerning the odometer reading. Specifically, this rule permits the transferor to use either an odometer disclosure statement containing two sets of certifications or an abbreviated disclosure form to disclose the mileage to his transferee. This change should help minimize the costs of the transition to the new disclosure forms required after April 29, 1989.

DATES: This final rule is effective February 23, 1989. It shall remain in effect until April 29, 1989.

ADDRESS: Petitions for reconsideration of this rule should be submitted to: Administrator, NHTSA, 400 Seventh Street SW. Washington, DC 20590. Any petitions for reconsideration should be submitted by March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION: To implement the Truth in Mileage Act of 1986 and to make needed changes in the Federal odometer laws, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27028 (1987). The agency received numerous comments on the NPRM, representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

A portion of August 1988 rule, which will become effective on April 29, 1989, amends the form and content of the current odometer disclosure statement. Currently, a transferor is required to issue to his transferee an odometer disclosure statement containing two sets of certifications. In the first set of certifications, the transferor must certify whether or not the odometer reading reflects the actual mileage of the vehicle, or whether it reflects the mileage in excess of the designed mechanical limit of the odometer. In the second set of certifications, the transferor must disclose information about whether the odometer was altered (repaired or replaced), set back, or disconnected. However, if the transferor discloses the mileage to his transferee on the certificate of title or other State document that evidences ownership of a vehicle, the transferor is not currently required to disclose whether the odometer was altered, set back, or disconnected. In view of the advantage of having a disclosure on the title, the agency permitted this shortened disclosure on documents issued by the State due to the practical limitations of space. *See,* 42 FR 38907 (1977); 45 FR 784 (1980).

Because we see no reason to differentiate between the disclosure on documents issued by the States and the disclosure on separate disclosure statements, the August 1988 rule eliminates the second set of certification requirements for transferors who issue an odometer disclosure statement that is neither on the title nor on any other document issued by a State. 52 FR 27024 (1987). As noted above, the August 1988 rule is effective on April 29, 1989.

The agency received a letter from the Virginia Independent Automobile Dealers Association (VIADA) concerning the use of a shortened odometer disclosure statement. VIADA requested that transferors be permitted to use the shortened odometer disclosure statement immediately, to minimize the cost burdens of the transition to the new form. The Oregon Independent Auto Dealers Association submitted a letter to the agency in support of VIADA's request. As a result of these letters, we published an NPRM on January 19, 1989, which proposed to revise paragraph (d) of section 580.4 to read as follows: "In addition to the information provided under paragraphs (a), (b), and (c) of this section, the transferor *may* also certify * * *" information concerning the disconnection or service of the odometer. (Emphasis has been added to highlight the discretion given to the transferor). 54 FR 2171 (1989).

The agency received one comment on the NPRM. The National Automobile Dealers Association agrees that permitting the use of the shortened odometer disclosure statement will

minimize the potential costs associated with the change to an abbreviated statement. The NPRM is adopted as proposed.

There is good cause for an effective date earlier than thirty days: minimizing the economic impacts of the final rule of August 1988 and gaining the investigative and consumer benefits of additional information on the new forms. Therefore, consistent with the Administrative Procedures Act, 5 U.S.C. 551 et seq., this revision to paragraph (d) of section 580.4 be effective immediately upon publication of this rule in the Federal Register. This amendment shall remain in effect until April 29, 1989. On April 29, 1989, the August 1988 final rule becomes effective and a new section 580.5 will amend the current section 580.4 as revised by this rulemaking action. As noted in the preamble to the August 1988 final rule, there is no prohibition against a seller providing information concerning the odometer reading in addition to the information required by the regulation. 53 FR 29470 (1988) However, the long form currently in use does not meet the requirements of the August 1988 final rule and may not be used after April 29, 1989.

Federalism Assessment

I certify that this rule has been assessed in light of the principles, criteria, and requirements as outlined in Executive Order 12612. Because this rule does not have federalism implications affecting the relationship between the national government and the States, no Federalism Assessment has been prepared.

Regulatory Impacts

A. Costs and Benefits to Dealers and Consumers

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. Because we estimate that the impacts of this rule would be minimal, a regulatory evaluation has not been prepared.

B. Small Business Impacts

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule gives transferors, both large and small businesses (dealers), discretion in determining whether to use a new, abbreviated odometer disclosure statement or the current form, the costs to these transferors will be minimized. Small businesses (dealers) will need to spend the same time executing each form as will large businesses (dealers). It is not possible to minimize this burden. However, since these small entities will make fewer sales than large businesses, they will spend less time overall on these forms. Accordingly, no regulatory flexibility analysis has been prepared.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly, an environmental impact statement has not been prepared.

D. Paperwork Reduction Act

This rule would require that dealers, distributors, consumers, and other transferors disclose mileage information and is consistent with the NHTSA's final rule concerning odometer disclosure information that becomes effective April 29, 1989. These requirements are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1520 and have already been approved by OMB through June 30, 1990. (OMB #2127-0047).

In consideration of the foregoing, 49 CFR Part 580 is amended as follows:

1. The authority citation for Part 580 continues to read as follows:

Authority: Section 408(a) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 92-513, 86 Stat. 947 (15 U.S.C. 1988); 49 CFR 1.51.

2. Section 580.4(d) is revised as follows:

§ 580.4. Disclosure of odometer information.

* * * * *

d) In addition to the information provided under paragraphs (a), (b), and (c) of this section, the transferor may also certify that:

(1) The odometer was not altered for repair or replacement purposes while in the transferor's possession, and he has no knowledge of anyone else doing so;

(2) The odometer was altered for repair or replacement purposes while in the transferor's possession, and the mileage registered on the repaired or replacement odometer was identical to that before such service; or

(3) The odometer was altered for repair or replacement purposes, the odometer was incapable of registering the same mileage, it was reset to zero, and the mileage on the odometer before repair was _____ miles/kilometers.

* * * * *

Diane K. Steed,

National Highway Traffic Safety Administrator.

[FR Doc. 89-4154 Filed 2-17-89; 3:39 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217, 222, and 227

[Docket No. 90237-9037]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Emergency rule.

SUMMARY: NOAA Fisheries has determined that there is need for an emergency rule because of a significant risk to the well-being of endangered and threatened sea turtles. This is indicated by the unusually high numbers of turtles, especially Kemp's ridleys, that have been found dead this past fall and winter in south Georgia and north Florida. NOAA Fisheries is issuing emergency regulations under the Endangered Species Act of 1973 (ESA) to require shrimp fishermen fishing in Atlantic offshore waters of south Georgia and north Florida to use certified turtle excluder devices (TEDs). The intended effect is to reduce the incidental catch and mortality of endangered and threatened sea turtles associated with shrimp trawling.

DATES: This rule becomes effective March 9, 1989 and expires on November 6, 1989.

ADDRESS: Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams (301-427-2322) or Charles A. Oravetz (813-893-3366).

SUPPLEMENTARY INFORMATION:

Background

NOAA Fisheries issued regulations affecting 50 CFR Parts 217, 222, and 227 to protect endangered and threatened sea turtles on June 29, 1987 (52 FR 24244-24262); however, as explained below, they have not yet become effective in

most areas. These 1987 Sea Turtle Conservation Regulations were issued to require shrimp fishermen in the Gulf of Mexico and the Atlantic Ocean from North Carolina to Florida to use protective measures to reduce the incidental catch and mortality of sea turtles in shrimp trawls, including the use of TEDs in certain areas at certain times. Conservation measures (TEDs or tow time restrictions, depending on the size of the vessel) were to apply from May 1 through August 31 offshore Georgia and Florida, except for the Canaveral Area of Florida. In the Canaveral Area, where the regulations are now in effect, conservation measures are required all year. NOAA Fisheries issued these regulations because of overwhelming evidence that shrimp trawlers incidentally capture and kill over 11,000 endangered and threatened sea turtles each year. See the preamble to the 1987 Regulations and the Final Supplement to the Final Environmental Impact Statement on Listing and Protecting the Green Sea Turtle, Loggerhead Sea Turtle and the Pacific Ridley Sea Turtle for a comprehensive description of the background data and events leading up to the 1987 Regulations.

Implementation of the 1987 Regulations outside the Canaveral Area has been delayed by Court actions and most recently by the Endangered Species Act Amendments of 1988 (Pub. L. 100–478). Section 1008(a) of Pub. L. 100–478 directs the Secretary of Commerce to delay the effective date of the 1987 Regulations until May 1, 1990, in inshore areas, and until May 1, 1989, in offshore areas, with the exception that the regulations in the Canaveral Area remain in effect. The Amendments do not otherwise restrict or modify the Secretary's authorities and responsibilities under the ESA (see section 1008(b)(10) of Pub. L. 100–478). NOAA Fisheries believes that Pub. L. 100–478 does not restrict the ability of the agency to respond to situations not foreseen at the time of issuance of the 1987 Regulations or enactment of the Amendments.

This emergency rule responds to the recent, unprecedented increase in the strandings of endangered turtles off the Atlantic coast of south Georgia and north Florida. This rule is different from the 1987 Sea Turtle Conservation Regulations, and responds to an emergency which was not foreseen at the time the 1987 Regulations were published.

Recent Events

A recent increase in the number of dead sea turtles found along the coast of Georgia and northeastern Florida from October through December, 1988, appears to be caused by shrimp trawling activities. Based on observations made by NOAA Fisheries Port Agents, there appears to have been an increase in fishing effort in 1988 along the coast of northeastern Florida and Georgia of 30 to 100 percent over that of previous years. In addition, the increase in dead turtles may be related to an increase in the number of sea turtles in the area. Sea turtles may be aggregating in this area because they have encountered an area abundant in food.

Sea Turtles. Loggerhead, green, leatherback and Kemp's ridley sea turtles inhabit waters along the Atlantic coast. Kemp's ridley turtles are believed to migrate from the northeastern and mid-Atlantic states into Florida and Georgia as the water temperature decreases in the fall (Henwood and Ogren, 1987). Kemp's ridley turtles winter off the coast of southern Georgia and Florida. They begin their return migration northward in late March and April. Loggerhead and green turtles remain in Florida throughout the year, including the summer nesting season. Leatherneck sea turtles are highly migratory and also appear to be abundant along the Georgia and Florida coasts in fall and winter.

Between October 1 and December 31, 1988, record numbers of dead Kemp's ridley sea turtles (primarily subadults) washed ashore (stranded) in southern Georgia and northeastern Florida, within NOAA Fisheries statistical zones 29 and 30 (an area between 29 and 31 degrees north latitude) (see map 1 of the 1987 Sea Turtle Conservation Regulations, 52 FR 24244–24264, June 29, 1987). Of 171 turtle strandings reported in this area during this period, 70 were Kemp's ridleys, 16 were leatherbacks, 3 were green turtles, 71 were loggerheads, and 11 were unidentified (see Table 1). These strandings are significantly more numerous than strandings in the same area in 1987 (see Table 2). Total strandings during this three month period increased in 1988 by 57 percent (108 turtles in 1987 versus 170 turtles in 1988). Kemp's ridley strandings increased considerably more; by 337 percent (16 in 1987 versus 70 in 1988).

Table 1. Strandings of sea turtles reported from NOAA Fisheries Statistical Zones 29 and 30 (northeastern Florida-southern Georgia), October 1–December 31, 1988. (Source: Sea Turtle Stranding and Salvage Network, unpublished data).

	loggerhead	green	leatherback	Kemp's	uniden.	Total
October	25	0	9	9	5	48
November	32	3	6	39	3	83
December	14	0	1	22	3	40
Total	71	3	16	70	11	171

Table 2. Strandings of sea turtles reported from NOAA Fisheries Statistical Zones 29 and 30 (northeastern Florida-southern Georgia), October 1–December 31, 1987. (Source: Sea Turtle Stranding and Salvage Network, unpublished data).

	loggerhead	green	leatherback	Kemp's	uniden.	Total
October	10	0	1	1	0	12
November	32	0	17	11	2	62
December	18	1	10	4	1	34
Total	60	1	28	16	3	108

There is particular concern over mortalities of Kemp's ridley turtles (*Lepidochelys kempi*). Of the seven extant species of sea turtles in the world, the Kemp's ridley is in the greatest danger of extinction. The only major nesting area for this species is a single stretch of beach near Rancho Nuevo, Tamaulipas, Mexico (Carr 1963; Hildebrand 1963). Virtually the entire population of adult females nests in this single locality (Pritchard 1969).

When nesting aggregations of Rancho Nuevo were discovered in 1947, the number of nesting females was estimated to be in excess of 40,000 (Hildebrand 1963). By the early 1970's, the number of mature female Kemp's ridleys had been reduced to an estimated 2,500–5,000 individuals. The 1988 estimate of sexually mature female Kemp's ridleys was 655 turtles (Woody, personal communication, 1989).

Subadult Kemp's ridleys are seen more often along the east coast than are adults. It is thought that juveniles are dispersed from the Gulf of Mexico to the U.S. Atlantic coast by the Gulf Stream (Pritchard and Marquez, 1973; Carr, 1980; Lazell, 1980; Lutcavage and Musick, 1985). Results of sea turtle tagging and recaptures suggest that juvenile Kemp's ridleys may remain along the U.S. Atlantic coast during much of their development and that they migrate along the east coast until they are sexually mature, at which time they presumably return to the Gulf of Mexico to breed (Henwood and Ogren, 1987).

Shrimping Activities. Recent research suggests a seasonal occurrence of Kemp's ridley sea turtles in the region during the period of increased shrimp fishing activity. Henwood and Ogren (1987) showed that sea turtle captures associated with shrimp trawling over a 10-year period along the Florida coast near Cape Canaveral resulted in the highest incidence of juvenile Kemp's ridley captures during January, February and March. The data indicate that Kemp's ridley turtles occur off the coast of Florida primarily in winter. In addition, tagging and recapture of Kemp's ridleys confirmed their presence in waters north of Cape Canaveral during summer and fall months (Henwood and Ogren, 1987).

Fishing for white shrimp occurs off the coast of Georgia from June to January and off the Florida coast from June to April. The peak of activity occurs from October through January, based on fishing effort data from 1983 to 1987 (Thompson, 1989 unpublished data). Most of the shrimping occurs in offshore waters within the territorial sea (to 3 miles seaward). There has been an increase in shrimping effort in 1988 along the coast of northeastern Florida and Georgia of 30 to 100 percent over that of previous years.

Action by the State of Florida. After analyzing the high number of strandings in Florida, the Florida Department of Natural Resources recommended that the Florida Marine Fisheries Commission (FMFC) adopt an emergency rule requiring trawl fishermen to use TEDs. On January 4, as modified on January 10, 1989, the FMFC recommended that the Governor and Cabinet approve a 90-day emergency rule that would require all commercial trawl fishermen, including shrimpers, fishing in state waters north of the Brevard-Volusia County line and east of the COLREGS line to (1) limit tow times to 75 minutes through January 31, 1989, and (2) use a "qualified" TED (as defined in NOAA regulations) as of February 1. The FMFC has determined that TEDs are readily available in the area. The Governor and Cabinet approved the emergency rule on January 24. The FMFC is also working on a permanent rule to require the use of TEDs during periods not covered by Federal regulations.

Meeting of Experts. On January 6, 1989, NOAA Fisheries convened a meeting of sea turtle experts and state and Federal officials to discuss the recent strandings of sea turtles off the coasts of north Florida and south Georgia. This group discussed the probable causes of the strandings, the effects of these strandings on sea turtle populations, and what should be done to protect sea turtle populations. Although there was no direct evidence as to the cause of the observed mortality of sea turtles, the group believed that there was strong circumstantial evidence that most of the mortalities were due to turtles being caught and drowned in shrimp trawls. The group also believed that strandings represent only a fraction (¼) of the total mortality because most dead sea turtles do not wash up on beaches.

Despite some Corps of Engineers dredging activity in Kings Bay channel in south Georgia, most of the carcasses found in the area were not mutilated, which is to be expected when turtles are taken by dredges. Observers on the dredges documented only 3 Kemp's ridley and 5 loggerhead sea turtles taken during the dredging period (November 6 through December 10, 1988). Thus, the vast majority of strandings are not likely to be due to dredging operations.

The group was not able to provide an assessment of the effects of these mortalities on sea turtle populations. However, they expressed great concern for the critically endangered Kemp's ridley sea turtle.

Because of the large numbers of strandings and the continuing strandings in this area, the group recommended that NOAA Fisheries publish an emergency regulation requiring all shrimp trawlers fishing in statistical zones 29, 30, and 31 to use TEDs. They also recommended that NOAA Fisheries continue to monitor strandings and expand the geographic coverage of the emergency rule if so indicated by the record of strandings. In addition, the group recommended that NOAA Fisheries amend the Sea Turtle Conservation Regulations to require protective measures in statistical zones 29, 30 and 31 all year.

Emergency Regulations

Based on the above information, NOAA Fisheries believes there is an emergency posing a significant risk to the well-being of certain sea turtle species. Section 4(b)(7) of the ESA and 50 CFR 424.20 of NOAA Fisheries' regulations implementing section 4 of the ESA provide for emergency rules in such situations. Emergency rules can take effect immediately upon publication in the **Federal Register** and be in effect for up to 240 days. Section 11 of the ESA provides general authority for the Secretary to issue regulations necessary to enforce the ESA.

Therefore, NOAA Fisheries issues this emergency rule requiring all shrimp fishermen to use qualified TEDs while shrimping offshore south Georgia and north Florida from 31 degrees N. latitude south to 29 degrees N. latitude (statistical zones 29 and 30). A qualified TED is a device approved by NOAA Fisheries and identified and described in 50 CFR 227.72(e)(4) (see 52 FR 24244–24262, June 29, 1987; 52 FR 37152–37154, October 5, 1987; and 53 FR 33820–33822, September 1, 1988).

Offshore is defined in 50 CFR 217.12 to mean marine and tidal waters seaward of the 72 COLREGS demarcation line, as depicted or noted on natural charts published by NOAA (see 52 FR 37152–37154, October 5, 1987). Inshore areas (primarily bays and inland waterways) of zones 29 and 30 are not included because significant shrimp fishing does not occur in these areas.

NOAA Fisheries has not included statistical zone 31 (offshore north Georgia) at this time as recommended by the experts because only 6 Kemp's ridleys have been reported stranded in this zone from October through December 1988.

This emergency rule becomes effective two weeks after publication in

the Federal Register, and remains in effect for 240 days. The rule will be withdrawn sooner if NOAA Fisheries finds, based on the best available information, that emergency action is no longer warranted.

These emergency regulations are different from the 1987 Sea Turtle Conservation Regulations. Upon becoming effective, the 1987 Regulations would have required the use of TEDs or restricted tow time on shrimp vessels less than 25 feet in the zones 29 and 30 of the Atlantic Offshore Area from May 1 through August 31 of each year. The emergency rule temporarily supercedes these requirements and requires the use of TEDs on all shrimp vessels, regardless of size, fishing in these areas for 240 days. The 1987 Regulation required reduced tow times for vessels smaller than 25 feet because only "hard" TEDs were available at that time and it was not certain that nets with hard TEDs could be handled safely on the decks of small trawlers. Since that time, two "soft" TEDs (made of flexible material) have been certified. NOAA Fisheries believes these soft TEDS can be easily handled and used safely on small vessels and, therefore, there is no exception on the use of TEDs for small vessels.

Future Actions

Based on the information summarized in this rule, NOAA Fisheries intends to propose regulations amending the 1987 Sea Turtle Conservation Regulations to require TEDs offshore for zones 29, 30 and 31 all year, as is required in Zone 28 (the Canaveral Area) on all shrimp trawlers, including vessels less than 25 feet.

NOAA Fisheries will continue to monitor stranding and other pertinent data to evaluate the effects of trawling and other activities on sea turtles. In addition, the ESA Amendments directed the Secretary of Commerce to contract with the National Academy of Sciences to conduct an independent review of sea turtle biology and conservation. The results of that review will be used to determine if additional emergency action and/or amendments to the Sea Turtle Conservation Regulations are appropriate.

Reporting Requirements

The March 2, 1987, Proposed Regulations on sea turtle conservation (52 FR 6179–6199) contained a collection of information requirement subject to the Paperwork Reduction Act. That provision would require shrimp fishermen to report pertinent information concerning the capture of sea turtles. The Office of Management and Budget (OMB) did not approve that collection. However, NOAA Fisheries intends to seek approval of a reporting requirement for these emergency regulations. If approved by OMB, these emergency regulations will be amended to require shrimp fishermen to report incidental captures of sea turtles.

Classification

NOAA has determined that this rule is necessary to respond to an emergency and is consistent with the ESA and other applicable laws.

Section 4(b)(7) of the ESA states that the requirements of section 553 of the Administrative Procedure Act do not apply to emergency regulations. NOAA Fisheries is providing notice of these regulations to the States of Georgia and Florida, as required by section 4(b)(7)(B) of the ESA.

This rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director, OMB, with an explanation of why it is not possible to follow the procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act. However, as noted above, NOAA Fisheries will separately request OMB approval of certain reporting requirements.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

NOAA has determined that this rule is consistent to the maximum extent practicable with the approved coastal zone management programs of the affected States. Neither this rule nor the ESA preclude any State from adopting more stringent sea turtle protective measures.

A Final Supplement to the Final Environmental Impact Statement on Listing and Protecting the Green Sea Turtle, Loggerhead Sea Turtle and the Pacific Ridley Sea Turtle was issued in conjunction with the 1987 Sea Turtle Conservation Regulations. That document concluded that there would be a positive impact on the quality of the human environment as a result of adopting the rules that require shrimp fishermen to use sea turtle protective measures in certain areas and certain times. Copies of the document are available upon request.

Relation to Congressional Action

The 1988 Amendments to the ESA required the Secretary of Commerce to delay implementation of the 1987 Sea Turtle Conservation Regulations as they apply to "offshore" waters until May 1, 1989, and as they apply to "inshore" waters until May 1, 1990. The regulations in effect for the Canaveral area were exempted from the delay.

Congress delayed implementation of the 1987 Sea Turtle Conservation Regulations, but did not preclude the Secretary from taking necessary conservation measures. NOAA Fisheries has interpreted congressional intent narrowly, i.e., that only the 1987 regulations are to be delayed. This emergency rule responds to unforeseen circumstances requiring immediate action. The appropriate House and Senate committees have been advised of this action.

Congress explained that the purpose of the amendments requiring the Secretary of Commerce to delay implementation of the 1987 Regulations was not to alter the Secretary's powers or responsibilities to "review, determine or redetermine, at any time, his obligations under law." (Pub. L. 100–478, section 1008(b)(10)). Therefore, the Secretary has a legal obligation to respond to this emergency. The Secretary's broad regulatory authority is found in section 4(b)(7) (16 U.S.C. 1533(b)(7)), section 4(d) (16 U.S.C. 1533(d)) and section 11(f) (16 U.S.C. 1540(f)) of the ESA.

In fulfilling this responsibility under the ESA, the Secretary is required to base his judgments on the "best scientific and commercial data available." (See 16 U.S.C. 1533(b)). This emergency rule is based on information not available at the time of the 1987 Regulations or Congressional action. The Secretary is, at the recommendation of scientific experts, requiring the use of TEDs in shrimp trawls in areas where extremely large numbers of endangered sea turtles, including Kemp's ridley, the most critically endangered of all species of sea turtles, have stranded. Based upon many years of research, NOAA Fisheries determined that the use of TEDs in shrimp trawls is the most effective means of avoiding turtle captures and mortality. This is the best information available to the Secretary and the information upon which he must base any decisions he makes in carrying out his responsibilities for the conservation of the species under the ESA.

List of Subjects in 50 CFR Parts 217, 222, and 227

Endangered species, Fisheries, Fishing, Reporting and recordkeeping requirements.

References

Carr, A.F. 1963. Panspecific reproductive convergence in *Lepidochelys kempi*. Ergebn. Biol. 26: 298–303.
Carr, A.F. 1980. Some problems of sea turtle ecology. American Zoology. 29 (3): 489–497.
Henwood, T.A. and L. Ogren. 1987. Distribution and migrations of immature Kemp's ridley turtles (*Lepidochelys kempi*) and green turtles (*Chelonia mydas*) off Florida, Georgia and South Carolina. Northeast Gulf Science. 9 (2): 153–159.
Hildebrand, H. H. 1963. Hallazgo del area de anidacion de la tortuga marina "lora", *Lepidochelys kempi* (Garman), en la costa occidental del Gulfo de Mexico. Ciencia, Mex 22(4): 105–112.
Lazell, J. D. 1980. New England waters: critical habitat for marine turtles. Copeia 1980 (2): 290–295.
Lutcavage, M. and J. A. Musick. 1985. Aspects of the biology of sea turtles in Virginia. Copeia 1855 (2): 449–456.
Pritchard, P. C. H. and R. Marquez. 1973. Kemp's ridley turtle or Atlantic ridley. I.U.C.N. monograph No. 2, Morges, Switzerland.
Pritchard, P. C. H. 1969. The survival status of ridley sea turtles in American waters. Biol. Cons. 2(1): 13–17.
Thompson, N. 1989. Unpublished and preliminary data on shrimp fishing effort off the southeastern U.S. coast (1983–1988).
Woody, J. 1989. Personal Communication, U.S. Fish and Wildlife Service.

Regulation Promulgation

For the reasons set out in the preamble, 50 CFR Part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for Part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, a new paragraph (e)(8) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(8) *Emergency restrictions.* (i) Notwithstanding the provisions of paragraphs (e) (2) and (3) of this section, in the Atlantic Area, offshore south Georgia and north Florida from 31 degrees N. latitude south to 29 degrees N. latitude (statistical zones 29 and 30), a qualified turtle excluder device (TED) must be carried and used in each net during trawling by all shrimp trawlers except those fishing for rock shrimp or royal red shrimp.

(ii) The requirements in paragraph (e)(8)(i) of this section expire on November 6, 1989.

Dated: February 15, 1989.

James W. Brennen,

Assistant Administrator for Fisheries.

[FR Doc. 89–4150 Filed 2–22–89; 8:45 am]

BILLING CODE 3510–22–M

---

50 CFR Part 655

[Docket No. 81020–9009–1]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Atlantic mackerel specification increase.

SUMMARY: NOAA issues this notice to increase the Initial Optimum Yield (IOY) specifications for Atlantic mackerel as provided by the regulations governing this fishery. This increase is assigned to the joint venture processing (JVP) component of the domestic annual harvest (DAH) specification, and to the total allowable level of foreign fishing (TALFF) specification. Regulations governing the Atlantic mackerel fishery require publication in the **Federal Register** of any adjustments, accompanied by reasons for such adjustments. This action is intended to foster the goal of the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) by creating benefits for the U.S. fishing industry.

DATES: Effective February 17, 1989. Comments are invited until March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508–281–3600, ext. 324.

SUPPLEMENTARY INFORMATION: The regulations at § 655.21(b)(2)(v) provide that initial annual specifications may be adjusted by the Regional Director, NMFS Northeast Region, after consulting with the Mid-Atlantic Fishery Management Council (Council). The Regional Director may adjust the IOY at any time during the fishing year if new information indicates that the IOY should be increased to produce maximum net benefits to the United States. The determination that maximum benefits will accrue is based upon consideration of factors outlined in the FMP.

Pursuant to 50 CFR 655.22, final initial specifications for Atlantic mackerel were published on January 19, 1989 (54 FR 2134), for the fishing year January 1 through December 31, 1989. The IOY for Atlantic mackerel resulted in a TALFF of 30,000 metric tons (mt) and JVP of 10,000 mt. The domestic mackerel industry, still considered to be in the early stages of development, derives benefits from the purchase requirements associated with TALFF allocations. Specifically, foreign nations are required to purchase 3 mt of JVP and 1 mt of U.S. processed product for every 9 mt of TALFF allocated.

To ensure that purchase requirements are met, the initial allocation of TALFF has been released in increments of 25% and JVP in 50% increments. TALFF of 15,000 mt has been released, and additional allocations were to be released when evidence was provided that purchase requirements were met.

The Regional Director has determined that four foreign nations have successfully met the purchase conditions. Therefore, after consultation with the Council, the Regional Director has determined that an increase of 17,000 mt to the Atlantic mackerel IOY would benefit the domestic industry by continuing the viability of joint venture operations and shoreside purchases.

In accordance with § 655.22(f), notice is hereby given that the IOY for Atlantic mackerel of 74,000 mt is increased by 17,000 mt to a total of 91,000 mt. DAH for Atlantic mackerel is increased from 44,000 mt to 50,000 mt and JVP is also increased by 6,000 mt, from 10,000 mt to 16,000 mt; TALFF is increased by 11,000 from 30,000 mt to 41,000 mt.

Classification: This action is authorized by 50 CFR Part 655 and complies with Executive Order 12291.

In view of the need to avoid disruption of the domestic fishery, NOAA has determined that this adjustment will be effective upon filing with the **Federal Register** because delaying the effective date of this notice is impractical, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and Recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 17, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–4133 Filed 2–17–89; 1:59 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 35
Thursday, February 23, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

General Regulations

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes to offer soybean oil and protein testing as official criteria effective September 4, 1989. Further, FGIS proposes to amend the regulations to require the reporting of soybean oil and protein on official inspection certificates for grade effective September 2, 1991. Soybeans are grown primarily for their oil and protein content; however, these tests are not currently provided by FGIS. FGIS will use approved near-infrared spectroscopy (NIRS) equipment in performing these tests and will certify the results to the nearest tenth of a percent. Comments are requested on the above proposals and also on the constant moisture basis to be used in reporting oil and protein results.

DATE: Comments must be submitted on or before April 24, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090–6454. Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail. Telex users may respond as follows: to Lewis Lebakken Jr., TLX:7607351, ANS:FGIS UC. Telecopy users may respond to the automatic telecopier machine at (202) 447–4628.

All comments received will be made available for public inspection at Room 0628 South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform those services do not meet the requirements for small entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements contained in the section to be amended have been previously approved by OMB under Control No. 0580–0011.

Standards Review

Soybeans are a large cash crop in the United States. They are used extensively in human foods, animal feeds, and industrial applications. The U.S. soybean crop contributes more protein and oil to our food economy than any other single crop (Ref. 1). The major portion of the crop is processed into oil and meal while the remainder is largely exported. According to the Foreign Agricultural Service, USDA, exports accounted for the disposal of approximately 40 percent of the soybean crop marketed during 1987/88. During the same time period, the World Agricultural Outlook Board, USDA, indicates that the United States produced an estimated 50.7 percent of the world's total soybean crop.

The United States Standards for Soybeans (7 CFR Part 810.1601–810.1605) have been established under the authority of the United States Grain Standards Act (7 U.S.C. 71 *et seq.*). The soybean standards divide each class of soybeans into four numerical grades and a U.S. Sample grade. Two special grades, garlicky and infested, are also provided to emphasize special conditions affecting the value and, as appropriate, are added to and made part of the grade designation. The grades and information provided under the present soybean standards do not include oil and protein testing. In addition, such testing is not official criteria as provided for in the regulations.

Although the present standards do not include oil and protein, domestic and foreign processors have incorporated these measurements into their respective quality control programs. As summarized in the June 1988, "Report on the Study of Uniform End-Use Value Tests" prepared by FGIS and USDA's Agricultural Research Service, industry has indicated a need to expand the soybean standards to address certain intrinsic properties, such as oil and protein content as these properties relate directly to user economics.

The need to identify and incorporate end-use value tests that are of economic value to buyers into the Official U.S. Standards for Grain is supported by the Grain Quality Workshops report "Commitment to Quality." The Grain Quality Workshops were initiated by the grain trade with meetings attended by different segments of the grain industry including grain handlers, researchers, and trade associations. In addition, the Grain Quality Improvement Act (GQIA) (Pub. L. 99–641) of 1986 amended section 2 of the U.S. Grain Standards Act (USGSA) concerning the declaration of congressional policy to state,

> It is also declared to be the policy of Congress . . . that Official United States Standards for Grain shall—
>
> (A) define uniform and accepted descriptive terms to facilitate trade in grain;
>
> (B) provide information to aid in determining grain storability;
>
> (C) offer users of such standards the best possible information from which to determine end-product yield and quality of grain; and
>
> (D) provide the framework necessary for markets to establish grain quality improvement incentives.

FGIS recognizes the importance of including tests for intrinsic properties, such as soybean oil and protein, in the official U.S. Standards. Accordingly, FGIS proposes to include oil and protein

testing under the USGSA as official criteria effective September 4, 1989. Official criteria is a quantified physical or chemical property of grain that is approved by FGIS to determine the quality or condition of grain or other facts relating to grain. Pursuant to regulation, the official inspection of grain may include analyzing a grain sample for grade, official factors, official criteria, or any combination thereof. No change to the regulations or standards is proposed as result of this action. Procedures for the testing of oil and protein content in soybeans would be included in the Grain Inspection Handbook, as appropriate.

FGIS will use approved NIRS equipment in performing these tests and will certify the results to the nearest tenth of a percent. Information on testing procedures and the availability of service will be made available by FGIS. Further, effective September 2, 1991, FGIS proposes to require that soybean inspections for grade include oil and protein analysis and the results reported in the "Remarks" section of all such official soybean certificates. This two-phase implementation plan will allow the market time to incorporate and adjust to the new testing procedure. FGIS proposes to require the reporting of soybean oil and protein on all official certificates for grade because these tests provide important information regarding soybean quality. Soybeans are grown almost exclusively for the value of their oil and protein content. Consequently, when describing soybean quality, oil and protein content should be included. The development of a NIRS program allows FGIS to provide this important quality information as part of the national inspection system.

Data from studies conducted by FGIS and private laboratories show that NIRS is a simple, timely, repeatable, and cost effective means of determining oil and protein content in soybeans. Typically, an oil and protein analysis can be performed in 5 to 8 minutes. The reference methods used by FGIS to develop the NIRS calibrations are a Kjeldahl procedure for determining the protein content and a solvent extraction procedure for determining the oil content.

Accuracy of Results

FGIS has been conducting a study to evaluate soybean oil and protein testing procedures under field conditions. Information from this study, when completed, will be used to confirm and refine the field testing and monitoring procedures.

Existing data indicate that the standard error of performance (SEP) between NIRS measurements and the standard reference methods for soybean oil and protein is 0.5 and 0.6 percentage points, respectively. For example, an NIRS protein value of 40 percent will agree within 0.6 percentage points of the Kjeldahl value, two thirds of the time.

The expected difference between NIRS measurements is approximately the same. When one NIRS oil or protein result is compared with another NIRS result, the values will agree within 0.6 percentage points, two thirds of the time. Therefore, an appeal inspection of a 40 percent original inspection result would theoretically test between 39.4 and 40.6 percent, two thirds of the time, and between 38.8 and 41.2 percent, 95 percent of the time.

The variation in results relates directly to inherent sampling variability, testing variability, and the distribution of the protein and oil within the soybean sample. FGIS continues to investigate ways to reduce this variability in results.

Moisture Reporting Basis

Currently, the moisture basis used to report the oil and protein content of soybeans is not uniform in the grain industry. The scientific community often prefers to report on a dry matter basis. The American Soybean Association currently reports their soybean survey results on a 13 percent moisture basis but has recommended an "as is" moisture basis for official inspection. Many importers use an "as is" reporting basis. The National Soybean Processors Association reports the protein in soybean meal on a 12 percent moisture basis.

Oil and protein quantities of soybeans with different moisture contents cannot easily be compared when reported on an "as is" moisture basis. Soybean oil and protein content are inversely related to moisture content. Therefore, FGIS does not consider reporting oil and protein on an "as is" moisture basis to be a viable option.

Reporting oil and protein on a constant moisture basis (e.g., dry matter, 12 percent or 13 percent) will provide data which may be easily compared. A constant moisture basis will require adjusting the reported percentage of oil and protein when compared to an "as is" moisture basis. However, this adjustment is solely mathematical. The chemical composition of the soybean i.e. the amount of oil and protein is not altered. The dry matter basis eliminates adjustments both up and down from the "as is" moisture basis. Oil and protein percentages reported on a dry matter basis will be higher than an other constant or "as is" moisture basis. However, any perception that dryer soybeans have higher total protein may encourage excessive drying (below 11 percent) of soybeans. Excessively dry soybeans would have a potentially negative effect on storability by increasing the number of soybean splits (Ref. 2). Split soybeans are more susceptible to mold growth and increased respiration (Ref. 3). Splits in the range of 10 to 15 percent are also thought to decrease oil yield (Ref. 4). Furthermore, some researchers have suggested that high percentages of splits have a negative impact on the flavor and oxidative stability of finished oil products (Ref. 5).

Reporting oil and protein on a moisture basis between 12–13 percent more closely reflects the actual oil/protein content of soybeans introduced into domestic and foreign markets. The average moisture levels of soybeans marketed during the calendar years 1986 and 1987 in domestic and foreign markets was 12.55 percent and 12.75 percent, respectively. However, reporting oil and protein on a 13 percent moisture basis may encourage producers to deliver soybeans with excessive moisture levels. A 12.5 percent moisture content is considered safe for long-term storage (Ref. 6). Since there are advantages and disadvantages associated with the given moisture levels, FGIS requests views and comments as to the preferred constant moisture basis to be used for reporting soybean oil and protein results. No change to the regulations or standards is proposed as a result of this action. The constant moisture basis to be used in reporting soybean oil and protein and related testing procedures would be included in the Grain Inspection Handbook, as appropriate.

In summary, by this action, FGIS requests comments on (1) providing soybean oil and protein testing, upon request, as official criteria beginning September 4, 1989; (2) revising § 800.162(a) of the regulations to require the reporting of soybean oil and protein on official soybean inspection certificates for grade effective September 2, 1991; and (3) the constant moisture basis to be used for reporting these results.

References

(1) Smith, A.K., and S.J. Circle, "Preface," Soybeans: Chemistry and Technology. Volume 1. Proteins, xi–xii, 1978.

(2) Paulsen, M.R., W.R. Nave, and L.E. Gray, "Soybean Seed Quality as Affected by Impact Damage," presentation for ASAE and CSAE at the University of Manitoba in Winnipeg, Canada, on June 24–27, 1979.

(3) List, G.R., and D.R. Erikson, "Storage, Handling, and Stabilization," Handbook of Soy Oil Processing, 267–354, 1980.

(4) Hill, L.D., "Measuring Soybean Quality," presentation for the German oil millers at the American Soybean Association in Washington, DC, on March 9, 1988.

(5) List, G.R., "Special Processing for Off-Specification Oil," Handbook of Soy Oil Processing, 355–376, 1980.

(6) Christensen, C.M., and H.H. Kaufman, "Good Grain Storage," Extension Folder 226, Agricultural Extension Service, University of Minnesota, 1977.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

PART 800—GENERAL REGULATIONS

For reasons set out in the preamble, 7 CFR Part 800 is proposed to be amended as follows:

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.162(a) is revised to read as follows:

§ 800.162 Certification of grade; special requirements.

(a) *General.* Each official certificate for grade shall show:

(1) The grade designation as required by the Official U.S. Standards for Grain;

(2) The test weight of the grain;

(3) The moisture content of the grain;

(4) The oil and protein content for soybean inspections, effective September 2, 1991;

(5) The results of each official factor for which a determination was made;

(6) The results of each official factor that determined the grade when the grain is graded other than U.S. No. 1;

(7) Any other factor information considered necessary to describe the grain; and

(8) Any additional factor results requested by the applicant for official factors defined in the Official U.S. Standards for Grain.

* * * * *

Date: February 1, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89–4011 Filed 2–21–89; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ANE–17]

Airworthiness Directives; Textron Lycoming O–320–A Series, et al.

In the matter of Textron Lycoming O–320–A series –B series, –C series, –D series, –E series; O–320–H2AD; IO–320–B1A, –B1C, –B1D, –B2A, –D1A, –E2A; LIO–320–B1A; AIO–320–A1B, –B1B; AEIO–320–E1B, –E2B; O–340–A1A, –A1B, –A2A; O–360–A series, –B series, –C series, –D series; O–360–F1A6; AEIO–360–B1G6, –H1A; HO–360–A1A, –B1A, –B1B; HIO–360–B1A; O–360–E1A6D; LO–360–E1A6D; LO–360–A1G6D; IO–360–B series; IO–360–E1A; O–540–A series; –B series, –E series, –F series, –G series, –H series, –J series; O–540–W1A5D; AEIO–540–D4A5, –D4B5; IO–540–C series, –D series, –N series, –T series; and IO–540–W1A5D Model Reciprocating Engines.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking (NPRM).

SUMMARY: This document withdraws an NPRM which proposed the adoption of an airworthiness directive (AD) that would have been applicable to all Textron Lycoming (hereinafter called "Lycoming") reciprocating model engines of the "parallel valve" cylinder head design. The proposed AD would have required repetitive inspections of the exhaust valve-to-exhaust guide clearance and mandatory oil and filter change/screen cleaning intervals.

The proposal was prompted by National Transportation Safety Board (NTSB) recommendations, service difficulty reports of exhaust valve sticking and incidents of unscheduled landings. Upon further consideration of the relative accident/incident data available and other information received from the user community, the FAA has determined that the AD is not required at this time and, accordingly, the NPRM is withdrawn.

EFFECTIVE DATE: March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Pat Perrotta, Propulsion Branch, ANE–174, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–7421.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring repetitive inspections of the exhaust valve-to-exhaust guide clearance and mandatory oil and filter change/screen cleaning intervals was published in the **Federal Register** on April 27, 1988 (53 FR 15057). Comments were requested from the public.

The proposal resulted from a study by the NTSB which investigated accidents and/or incidents due to broken and/or stuck exhaust valves, some with accompanying bent push rods. The proposed AD was part of the response to six recommendations made by the NTSB. The rest of the response was contained in another NPRM AD (Docket No. 88–ANE–10) published in the Federal Register on April 26, 1988 (53 FR 14814).

Exhaust valve sticking has been a persistent service problem that is caused by many variables and can result from excessive oil coking and combustion deposits that reduce the valve-to-guide clearance. Some of these variables include fuel and oil formulations, frequency of oil, oil filter, and air induction filter replacement, and the condition and maintenance of any engine cooling provisions. Engine operation can also have an influence on this service problem. For instance, operation in high ambient conditions, slow flight with reduced cooling, subjecting the engine to sudden cool down, or engine shut down without allowing sufficient cool down are some operational factors related to oil coking and combustion deposits.

The proposed AD was intended to prevent loss of engine power due to exhaust valve sticking and/or push rod bending which could result in an emergency landing.

Numerous comments were received in response to the NPRM, many of them informative and helpful in arriving at the decision to withdraw the proposed AD. However, many other comments indicate a possible lack of understanding of the nature and intent of the FAA's reason in publishing the NPRM.

The purpose of publishing an NPRM in the **Federal Register**, as with any other notice, is to give interested persons the opportunity to participate in the rulemaking process. It is not a declaration that a rule will be published. If the agency decides, based on analysis of the comments received and its own evaluation, not to proceed with the rule, the NPRM is withdrawn in a notice published in the **Federal Register**. There is no commitment to publish any AD prior to analyzing all comments from the general public.

The FAA was aware that the frequency of occurrence of unscheduled landings appeared low, considering the total number of engines in service.

However, the FAA is also aware that reported cases of service difficulties generally represents only a portion of the actual cases occurring in the field. The general aviation community, interfacing on a day-to-day basis with the realities of operating aircraft, has a vast combined operational knowledge that the FAA needs and should solicit throughout the rulemaking process. Therefore, it was decided to use the mechanism of an NPRM to get input from the general public in light of what appeared to be a possible airworthiness problem.

A major U.S. aircraft owners and pilots association, as well as other aircraft associations, opposed the proposed AD, questioning both the statistical basis and analysis used by the FAA. Additionally, the associations, along with other commenters, questioned why aircraft which use autogas or 80/87 octane aviation fuel were included if, as stated in the NPRM, the problem is related to the use of high-leaded aviation gas. Some of the issues raised concerning statistical data/analysis were questions which went beyond what would be necessary in justifying an AD, especially in light of service difficulties involving unscheduled landing. Concerning the issue of including aircraft using autogas or 80/87 octane aviation fuel, there is no effective way to identify operators who exclusively used either fuel.

Numerous commenters expressed the opinion that a cure would be for the FAA to mandate the return of wide-spread availability of 80/87 octane aviation fuel. Even if it concurred with that opinion, the FAA has no authority to mandate any such condition.

Many commenters stated that the FAA's estimate of $100 per year per engine to comply with the proposed AD was unrealistically low. Some reported the cost would be closer to $400–$500, with some detailed estimates in excess of $1000. Since the proposed action is being withdrawn, the FAA does not feel it is necessary to recalculate that cost.

The preponderance of comments opposed to the proposed AD referenced the small number of incidents of valve problems in terms of approximately 129,000 Lycoming engines that would be affected by the AD. Additionally, many commenters noted that a partial disassembly and inspection process, applied to so many engines, had the potential to introduce more problems than it was intended to cure by virtue of the disassembly and reassembly process itself. As previously stated, the FAA recognized the apparent low frequency of incidents in relation to the total engines in service. However, it is recognized that reported incidents represent only a portion of actual cases occurring in service. The possible validity of the second comment is recognized, but is not a valid criteria for determining whether to publish an AD when serious service problems exist.

Only one commenter favored adoption of the NPRM, and suggested that data-gathering provisions be incorporated into the proposed AD to give clues as to the cause of valve sticking.

Several factors have occurred since issuance of the proposed AD, or during its preparation, which have an additional influence on the FAA's decision to withdraw the proposal. These include:

(1) The proposal has received wide distribution, both through normal distribution and trade/user group publications. Additionally, it has resulted in a campaign by concerned users to request their local legislators to inquire about the proposed AD. Therefore, the potential service problems and normal routine maintenance operations, which would have been mandated by the proposed AD, have clearly been brought to the attention of the general aviation public.

(2) In any requests for granting of a time between overhaul (TBO) time extension beyond that specified by the manufacturer, the FAA will consider incorporating a valve/guide inspection per Lycoming Service Bulletin SB–388A and SB–404. Additionally, the FAA will consider the need to repeat the inspection procedure at specified intervals until overhaul is performed.

(3) Lycoming has revised Service Instruction–1425, and issued SB–480, which bring the oil servicing intervals and other maintenance procedures in line with what the proposed AD specified.

(4) The FAA issued a General Aviation Airworthiness Alert in July 1988. This alert highlights the information contained in the Summary and Supplementary Information of the Proposed AD. It also gives detailed recommendations for inspection procedures and repetitive maintenance that are compatible with the compliance section of the proposed AD. The alert includes a complete list of Lycoming service publications related to the service difficulties, inspection procedures, and recommended maintenance practice to reduce exhaust valve service problems.

In addition to reviewing public comments and the factors mentioned above, the decision to withdraw the NPRM can be summarized as follows:

- The number of incidents in relation to total engines in service is low.
- Wide distribution of the possible service problem was achieved by the NPRM and commercial publications.
- Lycoming has updated and published adequate instructions to avoid the problems mentioned in the NPRM.
- The FAA has alerted the public to the potential problem and provided recommended action to avoid it.

Therefore, the FAA is withdrawing the NPRM. Should further investigation and analysis demonstrate a continuing safety problem in this area, another NPRM may be promulgated in the future for public comment.

Conclusion

Since this action only withdraws an NPRM, it may be made effective in less than 30 days. It is neither a proposed nor final rule, and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Withdrawal of this NPRM constitutes only such action and does not preclude the FAA from issuing another notice or commit the FAA to any course of action in the future.

List of Subject in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

The Withdrawal

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, the proposed AD, Rules Docket No. 88–ANE–17, published in the **Federal Register** on April 27, 1988 (53 FR 15057), is hereby withdrawn.

Issued in Burlington, Massachusetts, on February 7, 1989.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–4101 Filed 2–22–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 132

Proposed Customs Regulations Regarding Filling Absolute Quotas

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Part 132, Customs Regulations, to

provide that importers may not transfer allotments from one port of entry to another for absolute quotas that fill at opening. This procedure, if adopted, will reduce the labor required by Customs in processing the absolute quota merchandise, expedite the release of the merchandise and provide more timely statistical information.

DATE: Comments must be received on or before April 24, 1989.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2119, Washington, DC 20229 (202–566–8237).

FOR FURTHER INFORMATION CONTACT: Karen Cooper, Regulatory Trade Operations Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–8592).

SUPPLEMENTARY INFORMATION:

Background

The rules and procedures applicable to quotas administered by Customs are set forth in Part 132, Customs Regulations (19 CFR Part 132).

An import quota is a quantity control on imported merchandise for a certain period of time. Absolute or quantitative quotas are those which permit a limited number of units of specified merchandise to be entered into the U.S. or withdrawn from warehouse for consumption in the U.S. during specified periods. Once the quantity permitted under the quota in filled, no further entries or withdrawals, for consumption, of merchandise subject to quota are permitted. Some absolute quotas limit the entry or withdrawal of merchandise, from particular countries (geographic quotas) while others are global quotas and limit the entry or withdrawal of merchandise, not by source, but by total quantity.

Generally, absolute quotas are established by Presidential proclamations, Executive Orders and legislative enactments. Once an absolute quota is established, importers may qualify their merchandise for the quota by timely submitting and entry summary or withdrawal, for consumption, for the merchandise subject to the quota. Quota status is the standing which entitles quota-class merchandise to admission under an absolute quota. Quota priority is the precedence granted to one entry summary or withdrawal, for consumption, or quota-class merchandise over other entries or withdrawals of merchandise subject to the same quota. Quota priority and status are determined as of the time of presentation of the entry summary for consumption or withdrawal for consumption, in proper form, with the estimated duties attached.

Absolute quotas generally are filled in one of two ways. It is anticipated that some quotas will be filled at the opening of a quota period and certain procedures are followed in these instances. Different procedures are followed when a quota which has not filled upon its opening approaches getting filled. It should be noted that this document only concerns procedures regarding the filling of absolute quotas at opening.

Procedure for Quotas Anticipated to be Filled at Opening

When it is anticipated that a quota will be filled at the opening of a quota period, entry summaries for consumption, or withdrawals for consumption, with estimated duties attached, may not be presented before 12 noon Eastern Standard Time in all time zones. Special arrangements are made so that all entry summaries for consumption, or withdrawals for consumption, for quota merchandise may be presented at the exact moment of the opening of the quota in all time zones. All importers prepared to present entry summaries for consumption, or withdrawals for consumption, when the quota opens are given equal opportunity to do so. All entry summaries for consumption, or withdrawals for consumption, presented in proper form are considered to have been presented simultaneously.

Quantities on all entry summaries for consumption, or withdrawals for consumption, considered to be submitted simultaneously, are prorated by Customs against the quota quantity admissible to determine the percentage to be allocated to each importer under the quota. The entry summaries for consumption or withdrawals for consumptiom are returned to the importers for adjustment. An adjusted entry summary for consumption, or withdrawal for consumption, with estimated duties attached, must be deposited within five working days after Customs authorizes release of the merchandise and the importer must take delivery of the merchandise within 15 days after release is authorized. Otherwise, the entry summary or withdrawal, for consumption, will be rejected and quota status lost.

Merchandise imported in excess of an absolute quota may be held for the opening of the next quota period by entering it for warehouse, or it may be exported or destroyed under Customs supervision.

Transfer of Allotments

Presently, when an absolute quota fills at opening and Customs prorates the quota quantity, each importer is permitted to take his prorated amount from any combination of lines of entry summaries or withdrawals, for consumtion, to be released in their entirety that he has presented which qualify for the quota. (Lines, in this context, refer to the actual lines on the relevant Custom forms.) The importer could choose to transfer his quota allotment and to have the merchandise released at any particular port of entry at which he had made proper presentation of the lines of entry summary or withdrawals, for consumption. Any entry summary or withdrawal that the importer does not choose to include in meeting his prorated amount, or which exceeds it, could be warehoused for the next period.

This procedure is labor intensive, inefficient and not cost-effective for Customs. Furthermore, the transfer of allotments from one port to another slows down the release of merchandise and generates inconsistent statistical information.

Proposed Changes in Procedures

The Automated Commercial System (ACS), developed by Customs to enable Customs to process the rapidly increasing volume of commercial importations in an efficient and expeditious manner, is now capable of calculating quota closings and prorations. Use of the ACS for these purposes will reduce the labor required and will expedite the release of merchandise and the providing of timely statistical information. Before ACS can assume these functions, however, Customs must adopt a change in its absolute quota procedures. Accordingly, Customs is proposing to amend Part 132, Customs Regulations (19 CFR Part 132).

Regarding absolute quotas that fill at opening, it is proposed to amend § 132.12(c), Customs Regulations (19 CFR 132.12(c)), to state that an importer may combine merchandise from one entry summary for consumtion or withdrawal for consumption with others within the same port to fill his quota allotment, but he may not transfer an allotment of quota from one port of entry to another.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in

accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a 'major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 132

Customs duties and inspection, Entry, Imports.

Proposed Amendments

It is proposed to amend Part 132, Customs Regulations (19 CFR Part 132), as set forth below.

PART 132—QUOTAS

1. The authority citation for Part 132, Customs Regulations (19 CFR Part 132), continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. It is proposed to revise the introductory text of § 132.12(c)(2) to read as follows:

§ 132.12 Procedure on opening of potentially filled quotas.

* * * * *

(c) Proration of quantitites. * * *

(2) In the event a quota is prorated, entry summaries for consumption, or withdrawals for consumption, with estimated duties attached, shall be returned to the importer for adjustment. Regarding absolute quota, an importer may combine merchandise from one entry summary for consumption, or withdrawal for consumption, with others within the same port to fill his quota allotment, but he may not transfer an allotment from one port of entry to another. The time of presentation for quota purposes, when a quota is prorated, shall be the exact moment of the opening of the quota provided: * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: February 13, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-4184 Filed 2-22-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 81N-0314]

Sulfiting Agents; Proposed Affirmation of Gras Status; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending for 120 days the period for submitting comments on the agency's proposal to affirm, with specific limitations, that certain uses of sulfur dioxide, sodium sulfite, and sodium and potassium metabisulfite (collectively known as "sulfiting agents" or "sulfites") are generally recognized as safe (GRAS).

DATE: Comments by June 19, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 19, 1988 (53 FR 51065), FDA issued a proposed rule that would affirm with specific limitations, that certain uses of sulfiting agents are GRAS. FDA gave interested persons until February 17, 1989, to submit comments.

The agency has received numerous comments requesting an extension of time to comment on the proposal. These comments have come from trade associations and a foreign government. These comments state that additional time is needed to allow for the assessment of the effects of the proposed rule on their food products. The periods of time requested for the extension vary from 30 days to 1 year.

Because these comments have demonstrated that this proposal has raised complex scientific and analytical issues, the agency is providing an additional 120 days for the submission of comments. The agency finds that a longer extension would be excessive. The agency provided a 60-day comment period at the time the proposal published. Consequently, the agency is providing a total of 180 days for comments. The agency believes that such a comment period provides ample time for the gathering of all relevant information and the submission of that information to FDA. Thus, interested persons will have until June 19, 1989, to submit comments regarding the GRAS status of the use of sulfiting agents as human food ingredients.

Interested persons may, on or before June 19, 1989, submit to the Dockets Management Branch (address above) written comments regarding the agency's proposal to affirm as GRAS the use of high fructose corn syrup as a direct human food ingredient. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 16, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-4105 Filed 2-17-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL-461-87]

Extension of Time To File for Taxpayers Outside the United States and Puerto Rico

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax Regulations relating to the extension of time to file federal income tax returns for United

States citizens and U.S. residents who are outside of the United States and Puerto Rico. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed before April 24, 1989. These rules are proposed to apply to federal income tax returns due on or after April 15, 1988.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (INTL–461–87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Peter J. Hanley, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20223 (Attention CC:LR:T (INTL–461–87)) (202–566–3499, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The temporary regulations contain no new reporting or recordkeeping requirements but merely move existing requirements to the new temporary regulations section and, thus, are not subject to the Paperwork Reduction Act (44 U.S.C. 3501), as amended.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR Part 1) under section 6081 of the Internal Revenue Code. For the text of the temporary regulations, see [T.D. 8241] published in the Rules and Regulations portion of this issue of the **Federal Register**.

Executive Order 12991 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in executive Order 12991 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Peter J. Hanley, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Administration and procedure, Filing requirements.

Proposed Amendments to the Regulations

The temporary regulations, [T.D. 8241], published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under section 6081 of the Internal Revenue Code of 1954.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89–4048 Filed 2–22–89; 8:45 am]

BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Implementation of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 contains several provisions which affect the administration of Dependents' Educational Assistance and benefits provided under the Vietnam Era GI Bill. The most important provisions include a change to the way in which the VA must measure certain courses which do not lead to a standard college degree; a change in the way the eligibility period is determined for some spouses eligible to receive Dependents' Educational Assistance; and a change to the provision governing receipt of benefits under the Vietnam Era GI Bill and other education programs administered by the Veterans Administration (VA). This proposal will better acquaint the public with the way in which the VA intends to administer the new provisions of law.

DATES: Comments must be received on or before March 27, 1989. Comments will be available for public inspection until April 4, 1989. The VA intends to make these amended regulations retroactively effective on October 28, 1986. That is the date on which the underlying provisions of law became effective.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until April 4, 1989.

FOR FURTHER INFORMATION CONTACT: William Susling, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233–2668.

SUPPLEMENTARY INFORMATION: Numerous regulations are amended in order to implement provisions of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 (Pub. L. 99–576). These provisions affect the measurement of certain courses which do not lead to a standard college degree. In many cases this will result in an increase in the monthly benefit payable to veterans enrolled in these courses. The provisions also prohibit receipt of benefits under two or more of the education programs administered by the VA. This will result in a sharp reduction in benefits to a few veterans. There is also a provision which provides a new method of determining the eligibility period for some spouses who are eligible for Dependents' Educational Assistance.

The VA finds that good cause exists for making these regulations, like the sections of the law they implement, retroactively effective on October 26, 1986. To achieve the maximum benefit

of this legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The VA has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these proposed amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are §§ 64.111 and 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 23, 1988.

Thomas K. Turnage,

Administrator.

Editorial Note: This document was received by the Office of the Federal Register on February 22, 1989.

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

PART 21—[AMENDED]

1. In § 21.1022, paragraph (b) is revised and paragraph (c) is removed, to read as follows:

§ 21.1022 Nonduplication—programs administered by the VA.

* * * * *

(b) *Chapter 34 and other programs administered by the VA.* An individual may not receive educational assistance allowance under 38 U.S.C. Chapter 34 concurrently with benefits under any of the provisions of law listed in this paragraph. If a veteran is eligible for educational assistance under 38 U.S.C. Chapter 34 and any of the provisions of law listed in this paragraph, he or she must elect which benefit he or she wishes to receive for the program of education the veteran wishes to pursue. These provisions of law are:

(Authority: 38 U.S.C. 1781; Pub. L. 99–576)

(1) 38 U.S.C. Chapter 31,

(2) 38 U.S.C. Chapter 35,

(3) 10 U.S.C. Chapter 107,

(4) Section 903 of the Department of Defense Authorization Act, 1981 or

(5) The Hostage Relief Act of 1980,

(6) 10 U.S.C. Chapter 106, and

(7) 38 U.S.C. Chapter 30.

(Authority: 38 U.S.C. 1781; Pub. L. 99–576)

2. Section 21.3022 is revised to read as follows:

§ 21.3022 Nonduplication—programs administered by the VA.

A person who is eligible for educational assistance under 38 U.S.C. Chapter 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. The election is subject to the conditions specified in § 21.4022 of this part. The provisions of law are:

(a) 38 U.S.C. Chapter 30,

(b) 38 U.S.C. Chapter 31,

(c) 38 U.S.C. Chapter 32,

(d) 38 U.S.C. Chapter 34,

(e) 10 U.S.C. Chatpter 106,

(f) 10 U.S.C. Chapter 107,

(g) Section 903 of the Department of Defense Authorization Act, 1981, or

(h) The Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 1781; Pub. L. 99–576)

3. Section 21.3046 is revised to read as follows:

§ 21.3046 Periods of eligibility—spouses and surviving spouses.

This section states how the VA will compute the beginning date, the ending date and the length of a spouse's or surviving spouse's period of eligibility. The period of eligibility of a spouse computed under the provisions of paragraph (a) of this section will be recomputed under the provisions of paragraph (b) of this section if her or his status changes to that of surviving spouse.

(Authority: 38 U.S.C. 1712(b))

(a) *Beginning date of eligibility period—spouses.* (1) If the permanent total rating is effective before December 1, 1968, the beginning date of the 10-year period of eligibility is December 1, 1968.

(2) The beginning date of eligibility—

(i) Shall be determined as provided in paragraph (a)(2) of this section when—

(A) The permanent total rating is effective after November 30, 1968, or the notification to the veteran of the rating was after that date, and

(B) Eligibility does not arise under § 21.3021(a)(3)(ii) of this part.

(ii) For spouses for whom the VA made a final determination of eligibility before October 28, 1986, shall be—

(A) The effective date of the rating, or

(B) The date of notification, whichever is more advantageous to the spouse.

(iii) For spouses for whom the VA made a final determination of eligibility after October 27, 1986, shall be—

(A) The effective date of the rating, or

(B) The date of notification, or

(C) Any date between the dates specified in paragraphs (a)(2)(iii) (A) and (B) of this section as chosen by the eligible spouse.

(iv) May not be changed once a spouse has chosen it as provided in paragraph (a)(2)(iii) of this section.

(3) If eligibility arises under § 21.3021(a)(3)(ii) of this part, the beginning date of the 10-year eligibility period is—

(i) December 24, 1970, or

(ii) The date the member of the Armed Forces on whose service eligibility is based was so listed by the Secretary concerned, whichever last occurs.

(Authority: 38 U.S.C. 1701(a); Pub. L. 99–576)

(b) *Beginning date of eligibility period-surviving spouses.* (1) If the VA determines before December 1, 1968, that the veteran died of a service-connected disability, the beginning date of the 10-year period is December 1, 1968.

(Authority: 38 U.S.C. 1712)

(2) If the veteran's death occurred before December 1, 1968, but the VA

does not determine that the veteran died of a service-connected disability until after November 30, 1968, the beginning date of the 10-year period is the date on which the VA determines that the veteran died of a service-connected disability.

(3) If the veteran's death occurred before December 1, 1968, while a total, service-connected disability evaluated as permanent in nature was in existence, the beginning date of the 10-year period is December 1, 1968.

(4) If the veteran's death occurred after November 30, 1968, and the VA makes a final decision concerning the surviving spouse's eligibility for dependents' educational assistance before October 28, 1986, the beginning date of the 10-year period is—

(i) The date of death of the veteran who dies while a total, service-connected disability evaluated as permanent in nature was in existence, or

(ii) The date on which the VA determines that the veteran died of a service-connected disability.

(5) If the veteran's death occurred after November 30, 1968, and the VA makes a final decision concerning the surviving spouse's eligibility for dependents' educational assistance after October 27, 1986, the beginning date of the 10-year period is—

(i) The date of death of the veteran who dies while a total, service-connected disability evaluated as permanent in nature was in existence, or

(ii) The date on which the VA determines that the veteran died of a service-connected disability, or

(iii) Any date between the dates specified in paragraphs (b)(5)(i) and (b)(5)(ii) of this section as chosen by the surviving spouse.

(6) Once a surviving spouse has chosen a beginning date of eligibility as provided in paragraph (b)(5) of this section, the surviving spouse may not revoke that choice.

(Authority: 38 U.S.C. 1712(b); Pub. L. 99-576)

(c) *Ending date of eligibility period.* (1) The period of eligibility cannot exceed 10 years and can be extended only as provided in paragraphs (d) and (e) of this section.

(2) If eligibility arises before October 24, 1972, educational assistance based on a course of apprentice or other on-job training or correspondence approved under the provisions §§ 21.4256, 21.4261 and 21.4262 of this part will not be afforded later than October 23, 1982, unless the eligible spouse or surviving spouse qualifies for the extended period of eligibility provided in paragraph (d) of this section.

(Authority: 38 U.S.C. 1712)

(d) *Extension to ending date.* (1) The ending date of a spouse's period of eligibility may be extended when the spouse is enrolled and eligibility ceases for one of the following reasons:

(i) The veteran is no longer rated permanently and totally disabled;

(ii) The spouse is divorced from the veteran without fault on the spouse's part; or

(iii) The spouse no longer is listed in any of the categories of § 21.3021(a)(3)(ii) of this part.

(2) If the spouse is enrolled in a school operating on a quarter or semester system, the VA will extend the period of eligibility to the end of the quarter or semester, regardlesss of whether the spouse has reached the midpoint of the quarter, semester or term.

(3) If the spouse is enrolled in a school not operating on a quarter or semester system, the VA will extend the period of eligibility to the earlier of the following:

(i) The end of the course, or

(ii) 12 weeks.

(4) If the spouse is enrolled in a course pursued exclusively by correspondence, the VA will extend the period of eligibility to whichever of the following will result in the lesser expenditure:

(i) The end of the course, or

(ii) The total additional amount of instruction that $1,053 will provide.

(Authority: 38 U.S.C. 1711(b)).

(5) The VA will not extend the period of eligibility when the spouse is pursuing training in a training establishment as defined in § 21.4200(c) of this part.

(6) An extension may not—

(i) Exceed maximum entitlement, or

(ii) Extend beyond the delimiting date specified in paragraph (a) or (e) of this section, as appropriate.

(Authority: 38 U.S.C. 1711(b), 1712(b), 1732, 1786).

(e) *Extended period of eligibility due to physical or mental disability.* A spouse or surviving spouse shall receive an extended period of eligibility when he or she applies for it and meets the criteria of § 21.1043(a) of this part. All other provisions of § 21.1043 of this part concerning commencing dates and length of extended periods of eligibility and discontinuance of educational assistance also apply to spouses and surviving spouses who qualify for extended periods of eligibility.

(Authority: 38 U.S.C. 1712(b).

4. In § 21.4022 paragraph (a) is revised to read as follows:

§ 21.4022 Nonduplication—programs administered by the VA.

(a) *Election.* A veteran or eligible person who is eligible for education or training benefits under more than one of the provisions of law listed in this paragraph based on his or her own service or based on the service of another person cannot receive such benefits concurrently. The individual must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. Except for an election between 38 U.S.C. Chapters 32 and 34 which is irrevocable once a check has been negotiated, the person may reelect at any time.

(1) 38 U.S.C. Chapter 30,

(2) 38 U.S.C. Chapter 31,

(3) 38 U.S.C. Chapter 32,

(4) 38 U.S.C. Chapter 34,

(5) 38 U.S.C. Chapter 35,

(6) 10 U.S.C. Chapter 106,

(7) 10 U.S.C. Chapter 107,

(8) Section 903 of the Department of Defense Authorization Act, 1981, or

(9) The Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 1781; Pub. L. 99-576).

* * * * *

5. In § 21.4100, paragraph (c) is revised to read as follows:

§ 21.4100 Counseling.

* * * * *

(c) *Provision of counseling.* The VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (b) of this section upon the request of the veteran or eligible person. The VA shall provide counseling as needed for the purposes identified in § 21.4101 of this part following either the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. The VA shall take appropriate steps (including notification where feasible) to acquaint all eligible veterans with the availability and advantages of counseling services.

(Authority: 38 U.S.C. 1663; Pub. L. 99-576)

6. Section 21.4101 is revised to read as follows:

§ 21.4101 Counseling—38 U.S.C. Chapter 34.

(a) *Required counseling.*

(1) In any case in which the VA has rated the veteran as being incompetent, the veteran must be counseled before selecting a program of education or training. The requirement that counseling be provided is met when—

(i) The veteran has had one or more personal interviews with the counselor;

(ii) The counselor has jointly developed with the veteran recommendations for selecting a program;

(iii) These recommendations have been reviewed with the veteran.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(b) *Other counseling.* Counseling is not required for veterans and servicepersons receiving benefits under 38 U.S.C. ch. 34 for any purpose other than that described in paragraph (a) of this section.

(Authority: 38 U.S.C. 1663; Pub. L. 99-576)

7. Section 21.4103 is revised to read as follows:

§ 21.4103 Failure to cooperate.

The VA will take no further action on the application of a veteran or eligible person for assistance under 38 U.S.C. Chapter 34 or Chapter 35 when he or she—

(a) Fails to report;

(b) Fails to cooperate in the counseling process; or

(c) Does not complete counseling to the extent required under § 21.4101(a) of this part.

(Authority: 38 U.S.C. 1663; Pub. L. 99-576)

8. In § 21.4104 paragraph (a) is revised to read as follows:

§ 21.4104 Travel expenses.

(a) *General.* The VA shall determine and pay the necessary expense of travel to and from the place of counseling for a veteran or eligible person who is required to receive counseling if—

(1) The VA determines that the veteran or eligible person is unable to defray the cost based upon his or her annual declaration and certification; or

(2) The individual has a service-connected disability.

(Authority: 38 U.S.C. 111)

* * * * *

9. In § 21.4136, footnote 3 to the chart in paragraph (a) and paragraph (i)(2)(ii) are revised to read as follows:

§ 21.4136 Rates—educational assistance allowance—38 U.S.C. Chapter 34.

(a) * * *

[3] See footnote 5 of § 21.4270(c) of this part for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month.

(Authority: 38 U.S.C. 1788; Pub. L. 99-576)

* * * * *

(i) * * *

(2) * * *

(ii) All hours of the veteran's related training which occurred during the standard workweek and for which the veteran received wages. (See footnote 5 to § 21.4270(c) of this part as to the requirements for full-time training.)

(Authority: 38 U.S.C. 1787(b)(3))

* * * * *

10. In § 21.4137, footnote 1 to the chart in paragraph (a) and paragraph (f)(2)(ii) are revised to read as follows:

§ 21.4137 Rates—educational assistance allowance—38 U.S.C. Chapter 35.

(a) * * *

[1] See footnote 5 of § 21.4270(c) of this part for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

(Authority: 38 U.S.C. 1786; Pub. L. 99-576)

* * * * *

(f) * * *

(2) * * *

(ii) All hours of the eligible person's related training which occurred during the standard workweek and for which the eligible person received wages. (See footnote 5 to § 21.4270(c) of this, part as to the requirements for full-time training.)

(Authority: 38 U.S.C. 1787(b)(3))

* * * * *

11. In § 21.4138, paragraph (b) and paragraph (f)(2)(i) are revised to read as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(b) *Other lump-sum payments.* Such a certification by an institution will be sufficient to release the payment of a lump-sum to or on behalf of the individual for the entire quarter, semester or term not later than the last day of the month following receipt of the certification by the VA provided the individual is:

(Authority: 38 U.S.C. 1780(f); Pub. L. 99-576)

* * * * *

(f) * * *

(2) * * *

(i) The Director of the VA field station of jurisdiction may authorize payment to be made for breaks, including intervals between terms, within a certified period of enrollment during which the school is closed under an established policy based upon an order of the President or due to an emergency situation.

(A) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Vocational Rehabilitation and Education Service will decide if payments may be continued. The decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.

(B) A school which disagrees with a decision made under this paragraph by a Director of a VA field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA field station where the decision was made. The Director, Vocational Rehabilitation and Education Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Vocational Rehabilitation and Education Service has the authority either to affirm or reverse a decision of the Director of a VA field station.

(Authority: 38 U.S.C. 1780(a))

* * * * *

12. In § 21.4203, paragraphs (a), (b), the introductory text of paragraph (c), the introductory text of paragraph (d), paragraph (d)(1), and paragraph (e) are revised, the introductory text of paragraph (f) is added and paragraph (f)(1)(i), and introductory text of paragraph (h) are revised to read as follows:

§ 21.4203 Reports—requirements.

(a) *General.* All the reports required by this paragraph shall be in a form specified by the Administrator.

(1) Except as provided in paragraph (a)(2) of this section each educational institution, veteran and eligible person shall report without delay such information on enrollment, entrance, reentrance, change in the hours of credit or attendance, pursuit, interruption and termination of attendance of each veteran or eligible person enrolled in an approved course as the Administrator may require and using a form specified by the Administrator. See paragraphs (b) through (h) of this section.

(2) An educational institution may delay in reporting the enrollment or reenrollment of a veteran or an eligible person until the end of the term, quarter, or semester when—

(i) The veteran or eligible person is enrolled in a program of independent study;

(ii) The veteran or eligible person is pursuing the program on a less than half-time basis;

(iii) The educational institution has asked the Director of the VA field station of jurisdiction in writing for permission to delay in making the report; and

(iv) The Director of the VA field station of jurisdiction has determined that it is not feasible for the educational institution to monitor interruption or

termination of the veteran's or eligible person's pursuit of the program.

(3) An educational institution which disagrees with a decision of a Director of a VA field station as to whether it may delay reporting enrollments or reenrollments as provided in paragraph (a)(2) of this section may ask to have that decision reviewed by the Director, Vocational Rehabilitation and Education Service. That request must be made in writing to the Director of the VA field station within one year of the date of the letter notifying the educational institution of the original decision.

(4) An educational institution which, under paragraph (a)(2) of this section, is delaying the reporting of the enrollment or reenrollment of a veteran shall provide the veteran with notice of the delay at the time that the veteran enrolls or reenrolls.

(5) In addition, educational institutions must—

(Authority: 38 U.S.C. 1785; Pub. L. 99-576)

(i) Verify enrollment for each veteran and eligible person receiving an advance payment; and

(ii) Verify the delivery of advance payment check and education loan check for each veteran and eligible person receiving an advance payment or loan.

(6) Nothing in this section or in any section in 38 CFR Part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.

(Authority: 38 U.S.C. 1780(d), 1784, 1785, 1798; Pub. L. 95-202, Pub. L. 96-466; Pub. L. 99-576).

(b) *Certifications of enrollment.* All the reports required by this paragraph shall be in a form specified by the Administrator.

(1) The VA requires that educational institutions report all entrances and reentrances on a certification of enrollment.

(2) All educational institutions, regardless of the way in which they are organized, must clearly specify the course in which the veteran or eligible person is enrolled.

(3) Schools organized on a term, quarter or semester basis—

(i) May report enrollment for the term, quarter, semester, ordinary school year plus the following summer term.

(ii) May not report enrollment for a period that exceeds the ordinary school year plus the following summer term.

(iii) Must report the dates for the break between terms if—

(A) The certification covers two or more terms, and a term ends and the following term does not begin in the same or the next calendar month;

(B) The veteran or eligible person elects not to be paid for the intervals between terms;

(C) The certification covers two or more summer sessions; or

(D) The certification covers at least one summer session and at least one term which is not a standard semester or quarter.

(iv) Must submit a separate enrollment certification for each term, quarter or semester if the student—

(A) Is a veteran or eligible person pursuing a program on a less than half-time basis, or

(B) Is a serviceperson.

(Authority: 38 U.S.C. 1784(a); Pub. L. 99-576).

(v) Where a veteran or an eligible person, who is pursing a course leading to a standard college degree, transfers between consecutive school terms from one approved institution to another approved institution, for the purpose of enrolling in, and pursuing, a similar course at the second institution, the veteran or eligible person shall, for the purpose of entitlement to the payment of educational assistance allowance be considered to be enrolled at the first institution during the interval, if the interval does not exceed 30 days, following the termination date of the school term of the first institution.

(Authority: 38 U.S.C. 1780)

(c) *Nonpunitive grade.* A school may assign a nonpunitive grade for a course or subject in which the veteran or eligible person is enrolled even though the veteran or eligible person does not withdraw from the course or subject. When this occurs, the school must report the assignment of the nonpunitive grade in a form specified by the Administrator in time for the VA to receive it before the earlier of the following dates is reached:

* * * * *

(d) *Interruptions, terminations and changes in hours of credit or attendance.* When a veteran or eligible person interrupts or terminates his or her training for any reason, including unsatisfactory conduct or progress, or when he or she changes the number of hours of credit or attendance, this fact must be reported to the VA by the school in a form specified by the Administrator.

(1) If the change in status or change in number of hours of credit of attendance occurs on a day other than one indicated by paragraph (d)(2) or (d)(3) of this section, the school will initiate a report of the change in time for the VA to receive it within 30 days of the date on which the change occurs. If the course in which the veteran or eligible person is enrolled does not lead to a standard college degree, and attendance must be certified for the course, the school may include the information on the monthly certification of attendance.

(Authority: 38 U.S.C. 1784(a), 1788(a); Pub. L. 99-576)

* * * * *

(e) *Correspondence courses.* Where the course in which a veteran is enrolled under 38 U.S.C. ch. 34 or a spouse or surviving spouse is enrolled under 38 U.S.C. ch. 35 is pursued exclusively by correspondence, the school will report by an endorsement on the veteran's or eligible spouse's or surviving spouse's certification the number of lessons completed by the veteran, spouse or surviving spouse and serviced by the school. Such reports will be submitted quarterly in a form specified by the Administrator.

(Authority: 38 U.S.C. 1780)

(f) *Certification.* All reports required by this paragraph must be in a form specified by the Administrator.

(1) *Courses not leading to a standard college degree.*

(i) Except as provided in this paragraph the VA requires that a certification of attendance be submitted monthly for each veteran or eligible person enrolled in a course not leading to a standard college degree. The fact that the course may be pursued on a quarter, semester or term basis will not relieve the veteran or eligible person and the school of this requirement. Unless exempted by this paragraph this requirement also applies to courses measured on a credit-hour basis. This requirement does not apply to—

(A) Courses measured on a credit-hour basis pursuant to footnote 6 of § 21.4270(a),

(B) A course pursued on a less than one-half-time basis,

(C) A course pursued by a serviceperson while on active duty, or

(D) A correspondence course which must meet the requirements of paragraph (e) of this section.

(Authority: 38 U.S.C. 1780(a)(2), 1788(a)(7); Pub. L. 99-576)

* * * * *

(h) *Unsatisfactory progress or conduct.* At times the unsatisfactory progress or conduct of a veteran or eligible person is caused by or results in his or her interruption or termination of training. If this occurs, the interruption or termination shall be reported in accordance with paragraph (d) of this section. If the veteran or eligible person

continues in training despite making unsatisfactory progress, the fact of his or her unsatisfactory progress must be reported to the VA, if such a report is required, within the time allowed by paragraphs (h) (1) and (2) of this section in a form specified by the Administrator.

(Authority: 38 U.S.C. 1674)

* * * * *

13. In § 21.4204, paragraph (a) is revised to read as follows:

§ 21.4204 Periodic certification.

(a) *Reports by schools, veterans and eligible persons.* (1) Except as provided in paragraph (a)(2) of this section the VA will require verification of continued enrollment in and pursuit of a course for the entire enrollment period for—

(i) A veteran or eligible person enrolled in a course which leads to a standard college degree; and

(ii) A veteran or eligible person pursuing a course not leading to a standard college degree which qualifies for credit-hour measurement pursuant to § 21.4270(a), footnote 6, of this part.

(2) The provisions of paragraph (a)(1) of this section do not apply to a veteran or eligible person who—

(i) Is on active duty, or

(ii) Is pursuing his or her program of education on a less than half-time basis.

(3) Verification of continued enrollment will be made at least once per year, and in the last month of enrollment if the enrollment period ends more than 3 months after the last verification. In the case of a veteran or eligible person who completed, interrupted or terminated his or her course, any communication from the student or other authorized person notifying the VA of the veteran's or eligible person's completion of the course as scheduled or of an earlier termination date, will be accepted to terminate payments accordingly. Reports by other veterans and eligible persons will be submitted in accordance with § 21.4203 (e), (f) or (g) of this part.

(Authority: 38 U.S.C. 1780(a)(7), 1780(g); Pub. L. 99-576)

* * * * *

14. In § 21.4230, paragraph (e) is revised to read as follows:

§ 21.4230 Requirements.

* * * * *

(e) *Selection—chapter 35.* The VA will approve a program of educational assistance selected by an eligible person if—

(1) It meets the requirements of paragraphs (a) and (b) or (c) of this section, and

(2) The individual is not already qualified for the objective of the program of education.

(Authority: 38 U.S.C. 1721; Pub. L. 99-576)

* * * * *

§ 21.4231 [Removed]

15. Section 21.4231 is removed.

16. In § 21.4232, paragraph (a)(3) is revised to read as follows:

§ 21.4232 Specialized vocational training—38 U.S.C. chapter 35.

(a) * * *

(3) Both the counseling psychologist and the Vocational Rehabilitation Panel will assist in developing the program, if the counseling psychologist has previously determined that the course is in the eligible person's best interest.

(Authority: 38 U.S.C. 1721, 1736; Pub. L. 99-576)

* * * * *

17. In § 21.4233 paragraphs (a)(1) and (b) (1) and (2) are revised, and paragraphs (b)(3) through (b)(5) are added to read as follows:

§ 21.4233 Combination.

* * * * *

(a) * * *

(1) That the alternate in-school periods of the course are at least as long as the alternate periods in the business or industrial establishment; in determining this relationship between the two components of the course, training received in a business or industrial establishment during a vacation or officially scheduled school break period shall be excluded from the calculation; where the course is approved as continuous part-time work and part-time study in combination, it shall be measured on the basis of the ratio which each portion of the training bears to full time as defined in § 21.4270(c) of this part. The institutional portion must be at least equivalent to one-half time training and must be combined with a job training portion sufficient for the combined training to equal full time.

(Authority: 38 U.S.C. 1682(a)(2) and 1732(b))

(b) * * *

(1) Where the standards for measurement of the courses pursued concurrently in the two schools are different, the VA will measure the veteran's or eligible person's enrollment by converting the units of measurement for courses in the second school to the equivalent in value expressed in units of measurement required for the courses in the program of education which the veteran or eligible person is pursuing at the primary institution. This conversion will be accomplished as follows.

(i) If the VA measures the course at the primary institution on a credit-hour basis, including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis as provided in § 21.4270(a), footnote 6 of this part, and—

(A) The VA measures the course in the second school on a mixed basis as provided in § 21.4270(b) of this part, the VA will add to the credit hours the veteran or eligible person is pursuing at the primary institution the credit hours attributable to any course the veteran or eligible person is pursuing at the second school which the VA could measure on a credit-hour basis. The clock hours attributable to the other courses pursued at the second school will be converted to credit hours;

(B) The VA measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.

(ii) If the VA measures the course at the primary institution on a mixed basis as provided in § 21.4270(b) of this part and—

(A) The VA measures the course at the second school on a credit-hour basis, the credit hours pursued at the second school will be added to the credit hours the veteran or eligible person is pursuing at the primary institution and the resulting credit hours will be used in making the calculations required by § 21.4270(b) of this part;

(B) The VA measures the courses at the second school on a clock-hour basis, the clock hours being pursued at the second school will be added to those pursued at the primary institution before making the calculations required by § 21.4270(b) of this part.

(iii) If the VA measures the courses pursued at the primary institution on a clock-hour basis, and

(A) The VA measures the courses pursued at the second school on a mixed basis, the courses pursued at the second school which the VA can measure on a credit-hour basis for at least one program at the second school will be converted to clock hours and the resulting clock hours added to determine the veteran's or eligible person's training time; or

(B) The VA measures the courses pursued at the second school on a credit-hour basis, including courses which qualify for credit-hour measurement on the basis of § 21.4270(a), footnote 6, of this part, the VA will convert the credit hours to clock hours to determine the veteran's training time.

(2) If the provisions of paragraph (b)(1) of this section require the VA to

convert clock hours to credit hours, it will do so by—

(i) Dividing the number of credit hours which the VA considers to be full-time at the educational institution whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and

(ii) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(2)(i) of this section. The VA will drop all fractional hours.

(3) If the provisions of paragraph (b)(1) of this section require the VA to convert credit hours to clock hours, it will do so by—

(i) Dividing the number of clock hours which the VA considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and

(ii) Multiplying each credit hour by the number determined in paragraph (b)(3)(i) of this section. The VA will drop all fractional hours.

(4) Where the standards for measurement of the courses pursued concurrently in the two schools are the same, the VA will measure the veteran's or eligible person's enrollment by adding together the units of measurement for the courses in the second school to the units of measurement for the courses in the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution. If courses at both schools are measured on a mixed basis so that the provisions of § 21.4270(b) of this part must be applied to the enrollment, the VA will separately add the credit hours and the clock hours first, and then apply the provisions of § 21.4270(b) of this part. In applying those provisions, the VA will use the standard for full time at the primary institution.

(5) Periodic certifications of training will be required from the veteran and each of the schools where concurrent enrollment is approved in a course which does not lead to a standard college degree and to which the measurement provisions of § 21.4270(a), footnote 6, of this part do not apply. (See §§ 21.4203 and 21.4204.).

(Authority: 38 U.S.C. 1788)

* * * * *

18. In § 21.4264 paragraph (c)(2) is revised to read as follows:

§ 21.4264 Farm cooperative courses.

* * * * *

(c) * * *

(2) The time involved in field trips and individual and group instruction, sponsored and conducted by the educational institution offering farm cooperative courses may be counted toward meeting the clock-hour requirements. See § 21.4270(c) of this part for measurement of farm cooperative courses.

(Authority: 38 U.S.C. 1682, 1732)

* * * * *

19. In § 21.4270, the chart entitled "Courses" in paragraph (a) is revised; new paragraph (c) is added; the chart titled "Courses" in paragraph (b) is moved to the newly added paragraph (c) and the remaining portion of paragraph (b) is revised to read as follows:

§ 21.4270 Measurement of courses.

(a) * * *

COURSES

Kind of school	Kind of course	Full time	¾ time	½ time	Less than ½ time more than ¼ time	¾ time or less
Trade or technical-nonaccredited (includes college courses not leading to a standing and degree.)[1].	Shop practice an integral part of course.[7].	30 clock hours attendance with not more than 2-½ hours rest period allowance and not more than 5 hours of supervised study.	22 through 29 clock hours attendance with not more than 2 hours rest period allowance and not more than 3-¾ hours of supervised study.	15 through 21 clock hours attendance with not more than 1-¾ hours rest period allowance and not more than 2-½ hours of supervised study.	8 through 14 clock hours attendance with not more than ¾ hour. allowance and not more than ¼ hour of supervised study.	1 through 7 clock hours attendance
	Theory and class instruction predominates.[2] [7].	25 clock hours net instruction and not more than 5 hours of supervised study.	18 through 24 clock hours net instruction and not more than 3-¾ hours of supervised study.	12 through 17 clock hours net instruction and not more than 2-½ hours of supervised study.	7 through 11 clock hours net instruction and not more than 1-¼ hours of supervised study.	1 through 6 clock hours net instruction.
Trade or technical-accredited (includes college courses not leading to a standard degree).[1].	Shop practice an integral part of course.[3] [6] [7].	22 clock hours attendance with not more than 2-½ hours rest period allowance.	16 through 21 clock hours attendance with not more than 2 hours rest period allowance.	11 through 15 clock hours attendance with not more than 1-¼ hours rest period allowance.	6 through 10 clock hours attendance with not more than ¾ hour rest period allowance.	1 through 5 clock hours attendance.
	Theory and class instruction predominates.[2] [3] [6] [7].	18 clock hours net instruction.	13 through 17 clock hours net instruction.	9 through 12 clock hours net instruction.	5 through 8 clock hours net instruction.	1 through 4 clock hours net instruction.

COURSES—Continued

Kind of school	Kind of course	Full time	¾ time	½ time	Less than ½ time more than ¼ time	¾ time or less
High school nonaccredited.	High school diploma or equivalent.[2, 5]	25 clock hours net instruction and not more than 5 hours of supervised study or 4 units per year or equivalent.	18 through 24 clock hours net instruction and not more than 3-¾ hours of supervised study or 3 units per year or equivalent.	12 through 17 clock hours net instruction and not more than 2-½ hours of supervised study or 2 units per year or equivalent.	7 through 11 clock hours net instruction and not more than 1-¼ hours of supervised study or 1 unit per year.	1 through 6 clock hours net instruction.
High school accredited.	High school diploma or equivalent.[2, 4]	18 clock hours net instruction or 4 units per year or equivalent.	13 through 17 clock hours net instruction or 3 units per year or equivalent.	9 through 12 clock hours net instruction or 2 units per year or equivalent.	5 through 8 clock hours net instruction or 1 unit per year or equivalent.	1 through 4 clock hours net instruction.
Elementary school nonaccredited.[1].	High school preparatory.[2].	25 clock hours net instruction and not more than 5 hours of supervised study.	18 through 24 clock hours net instruction and not more than 3-¾ hours of supervised study.	12 through 17 clock hours net instruction and not more than 2-½ hours of supervised study.	7 through 11 clock hours net instruction and not more than ¼ hour of supervised study.	1 through 6 clock hours net instruction.
Do[1]	Do[2]	18 clock hours net instruction.	13 through 17 clock hours net instruction.	9 through 12 clock hours net instruction.	5 through 8 clock hours net instruction.	1 through 4 clock hours net instruction.

[1] An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis as indicated for collegiate undergraduate courses in paragraph (b) of this section for an enrollment or reenrollment which begins before May 20, 1988, provided: (1) The academic portions of such courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses are measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit, and (3) the shop portions of such courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis as indicated for collegiate undergraduate courses in paragraph (b) of this section for an enrollment or reenrollment which begins after May 19, 1988, provided: (1) The academic portions of such courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses are measured on a minimum of 2 hours (or two 50-minute periods) of attendance per week for each quarter or semester hour of credit, and (3) the shop portions of such courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. In no event shall such courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full time courses; 1-½ hours for three-quarter-time courses of 16–21 clock hours; 1 hour for one-half-time courses of 11–15 clock hours; or ½ hour for less than half-time courses of 6–10 clock hours; no rest period shall be allowed for courses of less than 6 clock hours of attendance.

(Authority: 38 U.S.C. 1788; Pub. L. 100–322)

[2] In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in school's shops, in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

[3] Supervised study must b excluded.

[4] Diploma course or equivalent based on completion of 16 instruction units. If student is pursuing a course at a rate which would result in an accredited academic high school diploma at the end of 4 ordinary school years, he or she is considered in a full-time training. High school diploma courses or equivalent available only for Chapters 32 and 34 and eligible spouses and surviving spouses under Chapter 25.

[5] Diploma course or equivalent based on completion of 16 instruction units. High school diploma courses or equivalent are available only for Chapters 32 and 34 and eligible spouses and surviving spouses under Chapter 35.

[6] The VA will measure the veteran's or eligible person's enrollment in a course not leading to a standard college degree on a credit hour basis whenever all the conditions listed in this footnote are met. The veteran or eligible person is enrolled in a course which is offered during the school year by a fully accredited institution of higher learning in residence on a standard quarter or semester hour basis, and the course is approved pursuant to 38 U.S.C. 1775. A majority of the total credits required for the course is derived from unit courses or subjects offered by that institution of higher learning as part of the course, approved pursuant to 38 U.S.C. 1775, leading to a single standard college degree. When all of the conditions of this footnote are met the VA will measure the veteran's or eligible person's enrollment in the same manner as collegiate undergraduate courses are measured in paragraph (c) of this section (including footnote 2 to that paragraph). The VA will apply the provisions of § 21.4272(e) of this part and measure these courses as though they are undergraduate courses using the "normal method", when appropriate. The VA will apply the provisions of § 21.4272(f) of this part if one or more of the veteran's or eligible person's courses have insufficient standard class sessions; and the VA will apply § 21.4272(g) of this part if one or more of the veteran's or eligible person's courses are offered during a nonstandard term.

(Authority: 38 U.S.C. 1788(a)(7); Pub. L. 99–576)

[7] The VA will measure the veteran's or eligible person's enrollment as provided in paragraph (b) of this section when the provisions of that paragraph are met.

(Authority: 38 U.S.C. 1788(e); Pub. L. 99–576)

(b) *Mixed credit-hour and clock-hour measurement.* (1) When a course not leading to a standard college degree in which the veteran or eligible person is enrolled cannot qualify for credit-hour measurement under either footnote 1 or footnote 6 of paragraph (a) of this section, the VA will measure the course on a combined clock-hour and credit-hour basis when the provisions of this paragraph are met.

(i) The course in which the veteran or eligible person is enrolled–

(A) Is offered by an institution of higher learning, and

(B) Does not lead to a standard college degree; and

(ii) The institution of higher learning requires as part of the reservist's program of education one or more unit subjects for which credit is granted toward a standard college degree; and

(2) The VA will apply-

(i) The provisions of paragraph (c) of this section and the provisions § 21.4272 (e), (f) and (g) of this part, where appropriate, to the portion of the veteran's or eligible person's enrollment consisting of the unit subject or subjects described in paragraph (b)(1)(ii) of this section measured on a credit-hour basis, and

(ii) The provisions of paragraph (a) of this section to the portion of the veteran's or eligible person's enrollment which is being measured on a clock-hour basis.

(3) For a veteran or eligible person enrolled in a school where 12 credit hours are normally full-time, and where the courses which must be measured on a clock-hour basis would normally require 18 clock hours net instruction because the course is accredited and theory and class instruction predominate as provided in paragraph (f)(2) of this section, the VA will measure enrollment as provided in the following table. Clock hours in the table include customary intervals not to exceed 10 minutes between classes. Shop practices and rest periods are excluded. Supervised instruction periods in schools' shops and the time involved in field trips and individual and group instruction may be included in computing the clock-hour requirements. Credit hours in this table refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which meets the definition of §21.4200(b) of this part, before using the table the VA will convert the credit hours being pursued by the veteran or eligible person to equivalent credit hours using the procedures found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the veteran or eligible person is enrolled, the VA will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part.

Credit hour enrollment	Required clock hours for each training time				
	Full time	¾ time	½ time	Less than ½ but more than ¼ time	¼ time
1 credit hour	16 or more clock hours net instruction.	11 to 15 clock hours net instruction.	7 to 10 clock hours net instruction.	3 to 6 clock hours net instruction.	0 to 2 clock hours net instruction.
2 credit hours	15 or more clock hours net instruction.	10 to 14 clock hours net instruction.	6 to 9 clock hours net instruction.	2 to 5 clock hours net instruction.	0 to 1 clock hour net instruction.
3 credit hours	13 or more clock hours net instruction.	9 to 12 clock hours net instruction.	4 to 8 clock hours net instruction.	1 to 3 clock hours net instruction.	0 clock hours.
4 credit hours	12 or more clock hours net instruction.	7 to 11 clock hours net instruction.	3 to 6 clock hours net instruction.	0 to 2 clock hours net instruction.	Not applicable.
5 credit hours	10 or more clock hours net instruction.	6 to 9 clock hours net instruction.	1 to 5 clock hours net instruction.	0 clock hours	Not applicable.
6 credit hours	9 or more clock hours net instruction.	4 to 8 clock hours net instruction.	0 to 3 clock hours net instruction.	Not applicable	Not applicable.
7 credit hours	7 or more clock hours net instruction.	3 to 6 clock hours net instruction.	0 to 2 clock hours net instruction.	Not applicable	Not applicable.
8 credit hours	6 or more clock hours net instruction.	1 to 5 clock hours net instruction.	0 clock hours	Not applicable	Not applicable.
9 credit hours	4 or more clock hours net instruction.	0 to 3 clock hours net instruction.	Not applicable	Not applicable	Not applicable.
10 credit hours	3 or more clock hours net instruction.	0 to 2 clock hours net instruction.	Not applicable	Not applicable	Not applicable.
11 credit hours	1 or more clock hours net instruction.	0 clock hours	Not applicable	Not applicable	Not applicable.

(4) For a veteran or eligible person enrolled in a school where 12 credit hours are normally full-time, and where the courses which must be measured on a clock-hour basis would normally require 22 clock hours net instruction because the course is accredited and shop practice predominates, the VA will measure enrollment as provided in the following table. Supervised study is excluded from the clock hours included in this table. Credit hours in this table refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which meets the definition of § 21.4200(b) of this part, before using the table, the VA will convert the credit hours being pursued by the veteran or eligible person to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the veteran or eligible person is enrolled, the VA will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part.

Credit hour enrollment	Required clock hours for each training time				
	Full time	¾ time	½ time	Less than ½ but more than ¼ time	¼ time
1 credit hour	20 or more clock hours attendance with not more than 2¼ hours rest period allowance.	14 to 19 clock hours attendance with not more than 1½ hours rest period allowance.	9 to 13 clock hours attendance with not more than 1 hour rest period allowance.	4 to 8 clock hours attendance with not more than ½ hour rest period allowance.	0 to 3 clock hours attendance.

Credit hour enrollment	Required clock hours for each training time				
	Full time	¾ time	½ time	Less than ½ but more than ¼ time	¼ time
2 credit hours	18 or more clock hours attendance with not more than 2 hours rest period allowance.	12 to 17 clock hours attendance with not more than 1½ hours rest period allowance.	7 to 11 clock hours attendance with not more than ¾ hour rest period allowance.	3 to 6 clock hours attendance with not more than ¼ hour rest period allowance.	0 to 2 clock hours attendance instruction.
3 credit hours	16 or more clock hours attendance with not more than 1¾ hours rest period allowance.	11 to 15 clock hours attendance with not more than 1½ hours rest period allowance.	5 to 10 clock hours attendance with not more than ¾ hour rest period allowance.	1 to 4 clock hours attendance with not more than ¾ hour rest period allowance.	0 clock hours.
4 credit hours	15 or more clock hours attendance with not more than 1¾ hours rest period allowance.	9 to 14 clock hours attendance with not more than 1¼ hours rest period allowance.	4 to 8 clock hours attendance with not more than ½ hour rest period allowance.	0 to 3 clock hours attendance.	Not applicable.
5 credit hours	13 or more clock hours attendance with not more than 1½ hours rest period allowance.	7 to 12 clock hours attendance with not more than 1 hour rest period allowance.	2 to 6 clock hours attendance with not more than ¼ hour rest period allowance.	0 to 1 clock hour attendance.	Not applicable.
6 credit hours	11 or more clock hours attendance with not more than 1¼ hours rest period allowance.	5 to 10 clock hours attendance with not more than ¾ hour rest period allowance.	0 to 4 clock hours attendance.	Not applicable	Not applicable.
7 credit hours	9 or more clock hours attendance with not more than 1 hour rest period allowance.	3 to 8 clock hours attendance with not more than ½ hour rest period allowance.	0 to 2 clock hours attendance.	Not applicable	Not applicable.
8 credit hours	7 or more clock hours attendance with not more than ¾ hour rest period allowance.	2 to 6 clock hours attendance with not more than ¼ hour rest period allowance.	0 to 1 clock hours attendance.	Not applicable	Not applicable.
9 credit hours	5 or more clock hours attendance with not more than ½ hour rest period allowance.	0 to 4 clock hours attendance.	Not applicable	Not applicable	Not applicable.
10 credit hours	4 or more clock hours attendance with not more than ½ hour rest period allowance.	0 to 3 clock hours attendance.	Not applicable	Not applicable	Not applicable.
11 credit hours	2 or more clock hours attendance with not more than ¼ hour rest period allowance.	0 to 1 clock hours attendance.	Not applicable	Not applicable	Not applicable.

(5) The VA will measure an enrollment as provided in this paragraph when the provisions of paragraph (b)(1) of this section apply to the enrollment, but neither the provisions of paragraph (b) (3) nor (4) apply. This may occur when either the courses which must be measured on a clock-hour basis normally require neither 18 clock hours attendance nor 22 clock hours net instruction, or 12 credit hours are not normally full-time at the school, or both. Credit hours in this paragraph refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which is defined in § 21.4200(b) of this part, before using the procedure in this subparagraph the VA will convert the credit hours being pursued by the veteran or eligible person to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the veteran or eligible person is enrolled, the VA will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part. The VA will—

(i) Divide the number of credit hours in which the veteran or eligible person is enrolled by the number of credit hours normally considered full time at the school;

(ii) Multiply the percentage determined in paragraph (b)(5)(i) of this section by the number of clock hours of attendance or net instruction, as appropriate, which paragraph (a) of this section requires for each training time;

(iii) Subtract the result determined in paragraph (b)(5)(ii) of this section from the minimum number of clock hours of attandance or net instruction, as appropriate, which paragraph (a) of this section requires for each training time (rounding to the nearest clock hour and dropping fractions of one-half hour to the next lower clock hour).

(iv) Multiply the length of time (if any) provided in paragraph (a) of this section for a rest period allowance by the percentage determined in paragraph (b)(5)(i) of this section;

(v) Subtract the length of time determined in paragraph (b)(5)(iv) of this section from the length of time determined in paragraph (f) of this section for a rest period allowance (rounding to the nearest quarter-hour and dropping fractions of 7½ minutes to the next lower quarter-hour); and

(vi) Measure the enrollment on the basis of the greatest training time permitted by the number of clock hours in which the veteran or eligible person is enrolled and the length of his or her rest period allowance.

(Authority: 38 U.S.C. 1788(e); Pub. L. 99-576)

(c) *Collegiate graduate, professional and on-the-job training courses.* Collegiate graduate, professional and on-the-job training courses shall be measured as stated in this table. This shall be used for measurement of collegiate undergraduate courses subject to all the measurement criteria of § 21.4272. Clock hours and sessions mentioned in this table mean clock hours and class sessions per week.

(Authority: 38 U.S.C. 1682, 1732, 1777, 1787, 1788)

* * * * *

20. In § 21.4271 paragraphs (a) and (b) are revised to read as follows:

§ 21.4271 Trade or technical—high schools.

(a) *Shop practice predominates.* Except as provided in § 21.4270(a), footnotes 1, 6 and 7 of this part, trade or technical courses which include shop practice as an integral part of the course, will be measured on a basis of clock hours of attendance per week. This includes such courses under the supervision of a college or university where credit is not given towards a standard college degree.

(Authority: 38 U.S.C. 1788(a), 1788(e); Pub. L. 99–576)

(b) *Theoretical or classroom instruction predominates.* Except as provided in § 21.4270(a), footnotes 1, 6 and 7 of this part, a technical course in which theoretical or classroom instruction constitutes more than 50 percent of the required hours per week, will be measured on the basis of clock hours of net instruction per week. This includes such courses given by a college or university for which credit is not granted towards a standard college degree.

(Authority: 38 U.S.C. 1788(a), 1788(e); Pub. L. 99–576)

* * * * *

21. In § 21.4272, paragraph (c) is removed and reserved, paragraphs (d), (e), (f)(2)(i), (f)(3)(iii), (g)(3), (i)(1)(i), and (i)(1)(iii) are revised to read as follows:

§ 21.4272 Collegiate course measurement.

* * * * *

(d) *Course measurement general.* When an undergraduate course qualifies for credit-hour measurement, the VA will measure it according to the table contained in § 21.4270(c) of this part.

(Authority: 38 U.S.C. 1788; Pub. L. 99–576)

(e) *Course measurement normal method.* The VA will use the table in § 21.4270(c) of this part for measurement of a collegiate undergraduate course without adjusting the credit hours assigned by a school when the course is one of the following:

* * * * *

(f) *Course measurement; insufficient standard class sessions.*

* * * * *

(2) * * *

(i) The VA will determine training time for those weeks by using the table in § 21.4270(c) of this part without adjustment when the published accrediting standards of the accrediting agency that accredits the course or the educational institution offering the course permit a class session which is somewhat shorter than that stated in § 21.4200(g) of this part while requiring an overall level of educational pursuit that approximates the level required by courses offered on a standard quarter- or semester-basis.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99–576)

(3) * * *

(iii) Considering the standard class sessions to be the same as credit hours for the purpose of using the table in § 21.4270(c) of this part to determine training time for the week.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99–576)

* * * * *

(g) * * *

(3) The quotient resulting from the use of the formula is called equivalent credit hours. The VA treats equivalent credit hours as credit hours for measurement purposes. If there is at least one regularly scheduled standard class session per equivalent credit hour each week, the VA will use the number of equivalent credit hours to compute educational assistance allowance using the criteria of § 21.4270(c) of this part of the criteria of footnote 2 of that paragraph, whichever is appropriate. If a week contains less than one standard class session per equivalent credit hour, the VA will determine training time according to the provisions of paragraph (f)(2) of this section.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99–576)

* * * * *

(i) * * *

(1) * * *

(i) If the independent study credit hours the veteran or eligible person is pursuing would equal half time or more, according to the table in § 21.4270(c) of this part, the VA shall convert them to the highest number of hours considered to be less than half-time training. If the independent study is not measured on a credit-hour basis, the VA will assign a credit-hour evaluation to independent study based on the highest number of credit hours considered to be less than half-time training.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99–576)

* * * * *

(iii) The VA will use the total hours computed in paragraph (i)(1)(i) of this section to determine the training time based upon the measurement criteria found in § 21.4270(c) of this part.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99–576)

22. In § 21.4275 paragraph (a) is revised to read as follows:

§ 21.4275 Practical training courses; measurement

(a) *Medical and dental residencies and osteopathic internships and residencies.* The VA will measure medical and dental residencies, and osteopathic internships and residencies as provided in § 21.4270(c) of this part if they are accredited and approved in accordance with § 21.4265(a) of this part.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99–576)

* * * * *

[FR Doc. 89–3752 Filed 2–22–89; 8:45 am]
BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3525–7]

Approval and Promulgation of Implementation Plans; Massachusetts Ozone Attainment Plan; Control of Gasoline Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These revisions will reduce emissions of volatile organic compounds from gasoline by reducing the Reid Vapor Pressure (RVP) of gasoline. The intended effect of this action is to make reasonable further progress towards attainment of the ozone standard as expeditiously as practicable as required under the Clean Air Act.

DATES: Comments must be received on or before March 27, 1989.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Building, Boston, MA 02203 and the Division of Air Quality Control, Massachusetts Department of Environmental Quality Engineering, One Winter Street—8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Peter Hagerty (617) 565–3224, FTS: 835–3224.

SUPPLEMENTARY INFORMATION: On July 13, 1988, EPA received a SIP revision from the Commissioner of the Massachusetts Department of Environmental Quality Engineering (DEQE) that would add a new section to regulation 310 CMR 7.02(12). The new

section requires that no person shall sell or supply gasoline from a bulk plant or terminal having a Reid Vapor Pressure greater than 9.0 pounds per square inch (psi) from May 1 through September 15 beginning in 1989 and continuing each year thereafter. The revision also revises regulation 310 CMR 7.00 to add definitions for "bulk plants and terminals," "gasoline," "gasoline marketing facility," and "Reid Vapor Pressure."

Background

On November 12, 1987, the Commission of the Northeast States for Coordinated Air Use Management (NESCAUM) signed a Memorandum of Understanding expressing their intention to reduce the Reid Vapor Pressure (RVP) of gasoline to 10.0 pounds per square inch starting in the summer of 1988 and to 9.0 psi in the summer of 1989 and continuing every ozone season thereafter. The Commonwealth of Massachusetts held hearings on a regulation to implement such a strategy on January 5 and 7, 1988. Since there were delays in adopting necessary regulations, the 1988 limit of 10.0 psi has been eliminated and Massachusetts is limiting RVP to 9.0 psi from May 1 to September 15 starting in 1989, and continuing each year thereafter. On July 13, 1988 Massachusetts submitted a SIP revision to implement this provision to EPA for approval.

EPA published a notice of proposed rulemaking on August 19, 1987 (52 FR 31274) which would also require the control of RVP. The EPA proposal calls for control of the volatility of gasoline nationally. In that notice, EPA proposed that in the Northeast the standard would be 10.5 psi from May 16 to September 15 in the years 1989—1991 and 9.0 psi during the same time period in 1992 and thereafter. One option EPA is currently considering is taking final action now only on the 10.5 psi standard to be effective beginning in 1989 as an interim standard. The EPA regulation, when finalized, would normally preempt the state provision, under section 211(c)(4) of the Clean Air Act (the Act). However, section 211(c)(4)(C) of the Act provides for approval of state control of fuel or fuel additives if the control is part of the SIP and is necessary to achieve the primary or secondary national ambient air quality standard (NAAQS) which the plan implements.

Criteria for Approval

There are two different situations under which EPA might ultimately take final action on Massachusetts' RVP regulation:

(1) If EPA has not taken final action on its proposed RVP regulations so that there is no federal preemption of state regulation; or

(2) If EPA has taken final action and there is federal preemption. Either situation could occur within the time frame anticipated for final EPA approval of this SIP revision.

Section 211(c)(4)(A) of the Act, in describing federal preemption authority, states:

> "Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle engine—(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or (ii) if the Administrator has prescribed under paragraph (1) a control prohibition applicable to such fuel or fuel additive, unless [the] State prohibition or control is identical to the prohibition or control prescribed by the Administrator."

For the reasons described below, we do not believe this section of the Act preempts approval of the Massachusetts revision. First, EPA has not made the finding described in subparagraph (i) of paragraph (A), that no fuel control or prohibition under paragraph (1) of section 211(c) is necessary; and EPA clearly has not published any such findings in the Federal Register. In fact EPA published a Notice of Proposed Rulemaking (52 FR 31274) on August 19, 1987 which, when finalized, would control RVP. But this proposed federal RVP control is not yet final. Therefore, preemption has not yet occurred, and DEQE is free to adopt and enforce its own RVP controls at this time.[1]

Second, even if preemption were to occur, EPA may still approve certain state provisions for limits on RVP of fuel where it can make a finding under section 211(c)(4)(C) which would authorize EPA approval and, thus, eliminate the preemption problem. As set forth below, section 211(c)(4)(C) authorizes EPA to approve into the SIP a state-adopted fuel control measure that has otherwise been preempted by final EPA action if EPA finds that the state control "is necessary to achieve the standard" that the SIP implements.

Section 211(c)(4)(C) of the Act, in setting forth the circumstances under which an exception to federal preemption of state regulation may occur, states:

> A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air qualify standard which the plan implements.

In the Federal Register discussion of EPA's approval of a state oxygenated fuels program in the Maricopa County, Arizona SIP, EPA interpreted this language as requiring the Agency to find that a fuel control requirement was essential to achieve timely attainment of the standard. EPA said further that a fuel control measure may be "necessary" for timely attainment if no other measures that would bring about timely attainment exist, or if such other measures exist and are technically possible to implement, but are unreasonable or impracticable. Otherwise, no fuel control would ever be "necessary," since for any area there is at least one measure—namely, required shutdowns and prohibitions on driving—that would result in timely attainment of the carbon monoxide NAAQS. It is doubtful that Congress would have intended to bar EPA from approving State fuel controls into a SIP based on the availability of such drastic alternatives.[2]

Evaluation of How the Massachusetts Revision Satisfies the "Necessary" Criterion.

The Massachusetts submittal and related documents contain the State's analysis of the emission reductions that various measures would achieve and the remaining shortfall. That analysis concludes that the Massachusetts RVP regulation would reduce VOC emissions by an estimated 9000 tons per year (TPY). The quantity of reduction was derived from AP–42 emission factors for storage and transfer of gasoline and from the EPA MOBILE 3 emission factor model for motor vehicle emissions. This estimate may understate the actual reductions because it does not include the emissions reductions that would

[1] One court, in Exxon v. City of New York, 548 F.2d 1088 (2d cir. 1977), has suggested that EPA's regulation of the lead content of gasoline amounts under subparagraph (ii) to the preemption of State controls of any aspect of the content of gasoline (unless identical to the federal lead content control). EPA does not agree with that holding and hence does not believe that the reasoning of the decision should apply in cases involving State fuel regulations other than regulation of lead content.

[2] Federal Register August 10, 1988, 53 FR 30220, 30228.

result from decreased running losses associated with lower volatility gasoline. Running losses are emissions from the gasoline tank and fuel system that occur while a car is being driven and which result from an overload of the evaporative control system or escape through the filler cap.

Information available in the Massachusetts SIP and Reasonable Further Progress (RFP) Reports for 1986 and 1987, along with supplemental inventory information submitted by the state, were used in making the following findings. The 1987 RFP report shows that Massachusetts has achieved a 44% reduction of VOC emissions on a statewide basis from 1980 emissions. Based on EPA's experience with Regional Oxidant Model runs of 1980 it seems likely that a reduction on the order of at least 60% from 1980 levels is needed for attainment of the ozone standard.

Under this scenario, the emission reduction from 1987 levels needed for attainment translates to at least a 28% reduction from the 1987 inventory.

The VOC strategies identified by the MA DEQE as having the greatest potential for significant future VOC reductions are:

Measure	Tons reduced, tpy	Percent of 87 inventory
RVP 11.5 to 9.0 psi	9,000	5.1
Consumer/commercial solvents	7,400	[1] 4.2
Stage II controls	6,200	3.5
Architectural coatings	5,700	[1] 3.2
		16.0

[1] These are emissions from the entire category and could probably never be fully reduced due to the nature of available controls on these area sources. Many of these formulations cannot be fully reformulated or replaced and, because they are area source emissions, cannot be effectively captured and controlled.

No other categories of available controls will individually yield reductions of more than 1.5% of the 1987 inventory. The cumulative total of other available control strategies may reach 4%, which would yield approximately a 20% reduction in conjunction with the above controls if all controls were 100% effective. This still leaves at least an 8% VOC emission reduction shortfall. In order to make up this shortfall, the State is considering changes to its motor vehicle inspection and maintenance (I/M) program along with other measures as part of the Post-1987 ozone SIP planning process which will help reduce somewhat the shortfall. A reasonable level of I/M enhancement could produce an additional 2% emission reduction. Thus, even if such reasonable I/M enhancements are implemented, a shortfall will still exist necessitating the implementation of other measures to achieve attainment. Even if EPA does promulgate an RVP regulation requiring control to 10.5 psi in 1989, the State regulation will still provide additional reductions. No other measures that are clearly reasonable for implementation in Massachusetts could provide sufficient reductions to achieve attainment without the State RVP control.

Thus Massachusetts' RVP program appears to meet the appropriate test of being "necessary" to achieve attainment of the ozone standard. The fact that the state RVP regulation might not by itself fill the remaining shortfall and hence by itself achieve the standard does not mean the rule would not be "necessary" to achieve the standard within the meaning of Section 211(c)(4)(C). EPA believes that if Congress had intended EPA to approve a State fuel-content rule only if it were necessary and sufficient to achieve the standard, then it would have used that language in Section 211(c)(4)(C). EPA believes that the "necessary to achieve standard must be interpreted to apply to measures which are needed to reduce ambient levels (thus bringing the area closer to achieving the NAAQS) when no other reasonable measures are available to achieve this reduction. A contrary application of "necessary to achieve" in this situation would mean that measures which result in significantly improved air quality are nonetheless unacceptable (even though no other reasonable measures are available) just because they are insufficient to actually result in attainment.

Enforceability

In EPA's review for the enforceability of the Massachusetts revision a problem with the test methods section (310 CMR 7.02(12)(e)(2)(b)) was revealed. The state requires that fuel sampling and testing shall be conducted in accordance with ASTM methods (D4177–82, or D4057–81, and D323–58), all of which are acceptable to EPA, or ". . . any other method approved by the Department." EPA has informed the state that alternative methods must be approved by EPA as well. The state has committed to revise this section to resolve this problem. DEQE may drop the alternative method language or may require approval by EPA as well. EPA is proposing to approve the DEQE's RVP controls with the understanding that the state must revise the test methods section to cure the problem with alternative test methods prior to final EPA action.

Proposed Action

EPA is proposing to approve this revision to the Massachusetts Ozone State Implementation Plan to control gasoline volatility with the understanding that the state will revise the test method section of the regulation prior to final Agency action. EPA is also proposing to make a finding that this SIP revision meets the requirements of Section 211(c)(4)(C) of the Act for an exception to federal preemption at such time as EPA promulgates regulations to control the volatility of fuel. EPA's regulations were proposed in the Federal Register of August 19, 1987 (32 FR 31274).

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects for 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether it meets the requirements of Sections 110(a)(2)(A)–(K), 110(a)(3) and 211(c)(4)(C) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. These revisions are being proposed pursuant to Sections 110(a) and 301(a) of the Clean Air Act, as amended.

Authority: (42 USC 7401 and 7642).

Date: December 21, 1988.

Michael R. Deland,

Regional Administrator.

[FR Doc. 89–4135 Filed 2–22–89; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 180

[PP 7E3556/P480; FRL–3527–3]

Pesticide Tolerance for Aluminum Tris (O-Ethylphosphonate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the fungicide aluminum tris(*O*-ethylphosphonate) in or on the raw agricultural commodity ginseng. The proposed regulation to establish a

maximum permissible level for residues of the fungicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 7E3556/P480], should be received on or before March 27, 1989.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Public Information Branch, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

In person, bring comments to: Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 7E3556 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Wisconsin.

This petitioner requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the fungicide aluminum tris(*O*-ethylphosphonate) in or on the raw agricultural commodity fresh ginseng root at 0.1 part per million (ppm). The petitioner proposed that use of the pesticide on ginseng be limited to Wisconsin based on the geographical representation of the data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) of 250 milligrams (mg)/kilogram (kg) body weight/day.

2. An oncogenicity study in mice with no oncogenic effects observed under the conditions of the study at dosage levels of 0, 357, 1,430, 2,857/4,286 mg/kg body weight/day.

3. A reproduction study in rats with a NOEL of 300 mg/kg body weight/day.

4. A rabbit teratology study with no embryotoxic, fetotoxic, or teratogenic effects at the highest dose tested (500 mg/kg/day), and a teratology study in rats with a NOEL for maternal toxicity of 1,000 mg/kg/day.

5. Ames mutagenicity assays, *E. Coli* phage induction tests, micronucleus tests in mice, DNA repair tests using *E. Coli* and *Saccharomyces cerevisiae* yeast assay that were negative for mutagenic effects.

6. A 2-year feeding/oncogenicity study in rats with statistically significant elevated incidence of urinary bladder tumors (adenomas and carcinomas combined) in male rats at the highest dose level tested (2,000/1,500 mg/kg/day). In this study, Charles River CD–1 rats were dosed with aluminum tris(*O*-ethylphosphonate) at levels 0, 100, 400, and 2,000/1,500 mg/kg body weight/day. The high-dose level was reduced to 1,500 mg/kg body weight/day after 2 weeks. The highest dose level appeared to approximate a maximum tolerated dose based on the finding of urinary tract hyperplasia in male rats at the 2,000/1,500 mg/kg body weight/day feeding level. Lower body weight in male rats as compared to controls was also observed at the 2,000 mg/kg body weight/day level during the first 2 weeks of the study. Tumors were mainly observed in surviving males at the time of terminal sacrifice. Additional information regarding the Agency's evaluation of the 2-year rat feeding/oncogenicity study is provided in detail in a final rule document on aluminum tris(*O*-ethylphosphonate), published in the **Federal Register** of May 21, 1986 (51 FR 13585).

The Agency has concluded that the available data constitute limited evidence for the oncogencity of aluminum tris(*O*-ethylphosphonate) in male Charles River CD–1 male rats and has classified the pesticide as a Category C oncogen (possible human carcinogen with limited evidence of carcinogenicity in animals). The Agency has further decided not to develop a quantitative estimation of the oncogenic potential for aluminum tris(*O*-ethylphosphonate) for the following reasons:

a. The oncogenic response observed in the rat chronic feeding/oncogenicity study was confined solely to the high-dose males at one site (urinary bladder) in Charles River CD–1 rats. The tumors were mainly seen in surviving animals at the time of terminal sacrifice. Moreover, the unusually high dose at which oncogenic effects were observed (2,000/1,500 mg/kg body weight/day) approached a level in the diet at which the nutritional status of the experimental animal may begin to be compromised.

b. No oncogenic effects were observed in an oncogenicity study performed in mice at dose levels up to 4,286 mg/kg body weight per day.

c. The urinary metabolite of aluminum tris(*O*-ethylphosphonate) was not oncogenic when administered in the diet to Charles River CD–1 rats at dose levels up to 32,000 ppm (1,600 mg/kg body weight/day).

d. No adverse effects on the urinary bladder or the adrenal gland were produced by aluminum tris(*O*-ethylphosphonate) in a 2-year chronic toxicity study performed in dogs at dose levels up to 40,000 ppm (1,000 mg/kg body weight/day).

e. Mutagenic assays for aluminum tris(*O*-ethylphosphonate) were negative for mutagenic effects.

The acceptable daily intake (ADI) is based on the 2-year dog feeding with a NOEL of 250 mg/kg/day. Using a 100-fold safety factor, and rounding to the largest whole number, the ADI is calculated to be 3.0 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 180 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.000107 mg/kg/day for a 60-kg human; the current action will not increase the TMRC. Published tolerances utilize 0.0035 percent of the ADI.

The nature of the residues is adequately understood, and an adequate analytical method, gas-liquid chromatography using a flame photometric detector, is available for enforcement purposes. The analytical method is being prepared for publication in the *Pesticide Analytical Manual*, Vol. II (PAM II). In the interim the analytical method is available to anyone interested in pesticide enforcement from Therese Murtagh, Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

There is no reasonable expectation of secondary residues occurring in meat, milk, and eggs. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.415 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, [PP 7E3556/P480]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: February 9, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.415(b) is amended by adding and alphabetically inserting the raw agricultural commodity fresh ginseng root, to read as follows:

§ 180.415 Aluminum tris(O-ethylphosphonate); tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Ginseng root, fresh	0.1

[FR Doc. 89–4136 Filed 2–22–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 433, 435, 436, 440, and 447

[BERC–439–P]

Medicaid Program; Eligibility Groups, Coverage, and Conditions of Eligibility; Legislative Changes Under OBRA '87, COBRA, and TEFRA

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Medicaid regulations to incorporate or revise the following mandatory and optional eligibility groups of individuals for Medicaid coverage: (1) Pregnant women; (2) qualified children under a specified age; (3) children in adoptions and foster care; (4) certain disabled widows and widowers; and (5) certain disabled children being cared for at home. The proposed rule also would add a condition of eligibility relating to third party liability for medical assistance expenditures.

The amendments would conform the regulations to certain statutory provisions of the Omnibus Budget Reconciliation Act of 1987, the Consolidated Omnibus Budget Reconciliation Act of 1985, and the Tax Equity and Fiscal Responsibility Act of 1982.

DATES: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on April 24, 1989.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–439–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following locations: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD.

FOR FURTHER INFORMATION, CONTACT: Eligibility, Marinos Svolos, (301) 966–4452. Coverage: Thomas Hoyer, (301) 966–4607.

SUPPLEMENTARY INFORMATION: Title XIX of the Social Security Act (the Act) provides authority for States to establish Medicaid programs to provide medical assistance to needy individuals. Section 1902(a)(10) of the Act describes most of the groups of individuals to whom medical assistance may be provided under two broad classifications: the categorically needy (section 1902(a)(10)(A)) and the medically needy (section 1902(a)(10)(C)). The categorically needy classification is further divided into two subgroups: the mandatory categorically needy which, generally, States with Medicaid progams must cover (section 1902(a)(10)(A)(i)); and the optional categorically needy which States, at their option, may cover (section 1902(a)(10)(A)(ii)). Coverage of the medically needy group is also at States' option. In addition, section 1902(a)(10)(E), 1902(a)(47), and 1902(e) describe special coverage groups—newborn children of Medicaid-eligible women, pregnant women eligible during a presumptive period and for an extended postpartum period, certain disabled children being cared for at home, certain ventilator dependent individuals, and qualified Medicare beneficiaries.

The mandatory categorically needy group generally includes needy individuals who are receiving, or are

deemed to be receiving, cash payments under the cash assistance programs under the Act. These individuals include, for example, those receiving aid to families with dependent children (AFDC) under an approved State plan (title IV–A), adoption assistance and foster care maintenance payments (title IV–E) under an approved State plan, and supplemental security income (SSI) or mandatory State supplements (section 212(a) of Pub. L. 93–66). These individuals also include qualified pregnant women and children as defined under section 1905(n) of the Act.

The optional categorically needy group includes needy individuals who share financial (i.e., income and resource) and categorical (e.g., age, blindness, or disability) requirements and characteristics with the cash assistance recipients but are not eligible as mandatory categorically needy for various reasons. For example, individuals who are not actually receiving cash assistance are not required to be covered as mandatory categorically needy even if they would be eligible for cash assistance if they applied. However, States may choose to cover these individuals as optional categorically needy. Similarly, certain individuals who are not eligible for cash assistance solely because of their institutional status may be covered as optional categorically needy.

Under the provisions of section 1902(a)(10)(C) of the Act, the medically needy group includes individuals who meet the nonfinancial eligibility requirements of the cash assistance programs but who have income and resources that exceed allowable income and resource eligibility levels. In States that provide Medicaid to the medically needy, individuals with excess income may become Medicaid eligible if they incur medical expenses equal to the amount by which their income exceeds the medically needy level. This process is called "spending down." If a State chooses to provide medically needy coverage, it must cover, as a minimum, certain children under age 18 and pregnant women.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99–272, enacted on April 7, 1986, amended certain provisions of the Social Security Act relating to eligibility and coverage of certain categorically and medically needy groups of individuals. COBRA provided for extended Medicaid coverage of pregnancy-related and postpartum care for women who had been pregnant (section 9501(b) and (c)); changed the eligibility criteria for, and State of residence of, children receiving adoption assistance and foster care maintenance payments (sections 9529 and 12305); provided for Medicaid eligibility for children with special medical or rehabilitative needs who are under State adoption assistance agreements (section 9529) and certain disabled widows and widowers (section 12202); and established a new condition of eligibility for Medicaid applicants and recipients relating to cooperation in identifying and providing information to assist the States in pursuing third parties that may be liable for payments for medical assistance (section 9503).

COBRA also amended the mandatory categorically needy group of qualified pregnant women under section 1905(n) of the Act (as added by the Deficit Reduction Act (DRA), Pub. L. 98–369, July 18, 1984) to provide for eligibility for pregnant women who meet only the income and resource requirements of the approved AFDC plan (section 9501) and to permit States to cover qualified children under 5 under section 1905(n) of the Act who are born earlier than September 30, 1983, rather than covering them under a 5-year phase-in requirement (section 9511). Final regulations that incorporate these two COBRA provisions into the Code of Federal Regulations were published in the **Federal Register** on November 9, 1987 (52 FR 43063).

The Omnibus Budget Reconciliation Act of 1987 (OBRA '87), enacted on December 22, 1987 (Pub. L. 100–203), amended two provisions of the Act that had been included in COBRA and DRA:

- Section 4101(c) of OBRA '87 amended section 1905(n) of the Act, effective October 1, 1988, to expand the definition of qualified children to cover children who have not attained the age of 6 (or any age designated by the State that exceeds 6 but does not exceed 8). Effective October 1, 1989, States must cover qualified children who do not exceed age 7 (or any age designated by the State that exceeds 7 but does not exceed 8). Before the OBRA '87 amendment, only children under the age of 5 were included under this eligibility group.
- Section 4101(e) of OBRA '87 amended section 1902(e)(5) of the Act to provide for extended Medicaid coverage of pregnancy-related and postpartum services for pregnant women through the end of the month in which a 60-day period following termination of pregnancy ends. The 60-day period begins on the last day of pregnancy. Under COBRA, this postpartum period extended only for the 60 days after termination of pregnancy, beginning on the last day of pregnancy. The OBRA '87 provision is effective as if it had been included in the enactment of COBRA—that is, it applies to medical assistance furnished on or after April 7, 1986.

(Related amendments made by OBRA '87 concerning coverage of and services to pregnant women, infants, and children with incomes under specified poverty levels are being incorporated into a separate document.)

Extended Eligibility for Pregnant Women

Under section 1902(a)(1)(A)(i)(III) of the Act, qualified pregnant women are provided mandatory Medicaid categorically needy eligibility. Section 1905(n) defines a qualified pregnant woman as a pregnant woman who (A) would be eligible for an AFDC cash payment or would be eligible for an AFDC cash payment if coverage under the State's AFDC plan included an unemployed parents program, if the child had been born to her and was living with her in the month of payment and her pregnancy has been medically verified; (B) is a member of a family that would be eligible for AFDC in the State's AFDC plan included an unemployed parents program; or (C) otherwise meets the income and resource requirements of the State's approved AFDC plan. (Consistent with the explicit language in the Conference Committee reports that accompanied DRA and COBRA, we have required the medical verification of pregnancy to apply to all three groups. H. Rep. 861, 98th Cong., 2nd Sess. 1359 (1984) and H. Rep. 265, Pt. I, 99th Cong., 1st Sess. 57 (1985).) In addition, States with medically needy programs must cover all pregnant women who, except for income and resources, would be eligible as categorically needy under the provisions of section 1902(a)(10)(C)(ii)(II) of the Act.

Section 9501(c) of COBRA and section 4101(e) of OBRA '87 amended the Social Security Act to provide for extended eligibility and mandatory Medicaid coverage of pregnancy-related and postpartum services for all Medicaid-eligible pregnant women through the end of the month in which the 60-day period following termination of pregnancy ends. The 60-day period begins on the last day of pregnancy. The new section 1902(e)(5) of the Act that was added by COBRA and amended by OBRA '87 requires that a women who, while pregnant, was eligible for, applied for, and received medical assistance under the State plan, continues to be eligible under the State plan, as though she were pregnant, for all pregnancy-related and postpartum medical assistance through the end of the month in which the 60-day period (beginning on

the last day of pregnancy) ends. The intent of this provision is to assure that services to Medicaid-eligible pregnant women do not end with termination of the pregnancy but are extended through a specified postpartum period. This provision is effective for medical assistance furnished on or after April 7, 1986.

The language of the COBRA provision specifies that a woman who, while pregnant, was eligible for, applied for, and received medical assistance "shall continue to be eligible" for Medicaid. We believe that this language means that the woman must be eligible for Medicaid on the last day of her pregnancy in order for her to *continue* to be eligible for the postpartum period. Eligibility for the postpartum period after pregnancy ends would continue without any redetermination of eligibility, even if the woman's financial circumstances change during this period. We believe that this interpretation is supported by the intent of the law as expressed in the House Energy and Commerce Committee Report that accompanied COBRA (H. Rep. 265, Pt. I, 99th Cong. 1st Sess., 56–58 (1985)). The intent, as expressed in the Committee report, was to ensure that needy pregnant women who were eligible for Medicaid at the end of their pregnancy receive the necessary postpartum services. The report states that eligibility of pregnant women under section 1905(n) of the Act begins from the date of medical verification of purposes of pregnancy-related and postpartum care, for the specified postpartum period. We could have interpreted the phrase "continue to be eligible" to mean a continuation of eligiblity which the woman had at some time during the pregnancy, and not on an uninterrupted basis or on the last day of pregnancy. Under this alternative interpretation, a woman who was eligible at some time during her pregnancy but not on the last day of her pregnancy could receive pregnancy-related and psotpartum services for the specified period after her pregnancy ends. However, we do not believe that this was the intent of Congress. We believe that a better reading of the statute would require a woman to be eligible as a qualified pregnant woman under the requirements of section 1905(n) at the point at which the pregnancy ends in order for services to be *continued*—that is, the last day of her pregnancy.

The specific services that would be available to these eligible women during the specified period after the pregnancy ends are discussed in detail under the succeeding section of this preamble on Comparability of Services for Pregnant Women.

We propose to add new §§435.118 and 436.122 to the Medicaid regulations to provide for mandatory extended categorically needy eligibility for all pregnancy-related and postpartum services under the State plan through the end of the month in which the 60-day period following termination of the pregnancy occurs for women who, while pregnant, were eligible for, applied for, and received Medicaid on the last day of their pregnancy. Because pregnant women are a mandatory medically needy group, we also propose to add a new provision under §§435.301(b)(1)(iv) and 436.301(b)(10)(iv) to provide for extended medically needy coverage for this group of women who are medically needy as of the last day of their pregnancy.

Comparability of Services for Pregnant Women

Under the general requirement for comparability of Medicaid services under section 1902(a)(10)(B) of the Act, the same amount, duration, and scope of services must be made available to all categorically needy individuals and the services made available to the categorically needy must be no less than those made available to the medically needy, except as provided for under section 1902(a)(10) in the material following paragraph (E). In addition, section 1902(a)(10)(C)(iii)(II) of the Act requires a State to provide prenatal care and delivery services to all eligible medically needy pregnant women.

Section 9501(b) of COBRA amended section 1902(a)(10) to provide an additional exception to the comparability of services requirement—to allow States to provide more extensive prenatal care and postpartum services to pregnant women than the covered services that they now provide to other categorically needy individuals. Section 9501(b) added a new clause (V) in the material at the end of section 1902(a)(10) to provide that the making available to pregnant women covered under the plan of services related to pregnancy (including prenatal, delivery, and postpartum services) and to any other condition that may complicate pregnancy does not require the making available of these services to other individuals. However, these services must be made available in the same amount, duration, and scope to all pregnant women covered under the plan (categorically and medically needy). The provision is effective on April 7, 1986. Under this provision of COBRA, States that provide pregnant women services relating to pregnancy or services for other conditions that may complicate pregnancy, or that elect to provide a greater amount or duration of those services to pregnant women, are not required to provide these services to other Medicaid recipients. For example, if a State wishes to provide prescribed drugs (an optional service) and 10 additional days of inpatient hospital care (an expansion of a State plan coverage limitation) to its medically needy pregnant women for pregnancy-related conditions or conditions that may complicate pregnancy, it would be required to provide these services to categorically needy pregnant women. However, if would not be required to provide these services to any other Medicaid-eligible group. States still would be prohibited from offering services to pregnant women that are lesser in amount, duration, or scope than those offered to other categorically needy groups.

We believe that it would be helpful in understanding the statutory scheme governing Medicaid coverage of pregnant women to focus on the different terms used in sections 1902(a)(10)(C) (the description of the medically needy groups), 1902(3)(5) (the definition of qualified pregnant women), and clause V of the material at the end of section 1902(a)(10) of the Act (the exception to the comparability of services requirement relating to services to pregnant women). Section 1902(a)(10)(C)(ii)(II) of the Act refers to "prenatal care and delivery services" for pregnant women. Section 1902(e)(5) refers to "pregnancy-related and postpartum medical assistance." Section 1902(a)(10), in clause V of the material at the end of the section, refers to "services relating to pregnancy * * * or to any other condition which may complicate pregnancy." In addition, clause V specifies that services relating to pregnancy include "prenatal, delivery, and postpartum services."

We propose to leave to the States the responsibility for defining these terms within the bounds of broad policy guidelines. Generally, the State plan includes services identified in section 1902(a)(1) through (21) of the Act (mandatory and optional services that are considered as medical assistance to Medicaid recipients) that would qualify as "pregnancy related," or that would meet the requirement for provision of prenatal and delivery services and postpartum medical assistance. For example, inpatient hospital, physician, and clinic services may qualify as pregnancy-related services or satisfy the requirement for prenatal services.

Therefore, we have not proposed to require States to identify specifically which of these services it provides to pregnant women (as long as the State's plan provides for the statutorily required services). However, we would require States to specify in their plans that they meet the requirements of providing those services to pregnant women which are mandated by the statute.

We interpret "pregnancy-related services" to mean those services which are needed because the woman is or was pregnant, either because they are necessary for the health of the pregnant woman or fetus or because the services became necessary as a result of the woman having been pregnant. These include, but are not limited to, prenatal care, delivery, and postpartum services.

On the other hand, "services relating to any other condition which may complicate pregnancy" are not "pregnancy related" because they do not arise because of the pregnancy. These services apply to conditions which arise or were present independent of the pregnancy but which have the potential to affect the pregnancy. Because these services are for conditions "which may complicate the pregnancy," the services can be provided only while the woman is pregnant.

• Services provided to pregnant women. Services available to categorically needy pregnant women must, under the comparability of services provisions of section 1902(a)(10)(B)(i) of the Act, include at least the full range of services that are available to the categorically needy group. Similarly, under the comparability provisions of section 1902(a)(10)(B)(ii) of the Act, any services made available to categorically needy pregnant women must not be less than those made available to medically needy pregnant women. If the State elects to provide additional State plan services for pregnant women, including, at its option, treatment for conditions which may complicate the pregnancy, it may do so without providing these services to other Medicaid-eligible individuals. However, it must provide these services to all eligible pregnant women (categorically needy and, in States which cover the medically needy, medically needy).

We do not propose to require a State to specify in its plan the specific treatments or conditions which would be covered for these women in addition to those covered for other individuals. The State would be required to list those services identified in section 1905(a) of the Act which will be furnished only as pregnancy-related and specify any additional coverage of section 1905(a) services already included in the plan (but which are subject to service limits) which will be available to these individuals.

• Services provided through the end of the month in which the 60-day period following termination of pregnancy ends. During this period, beginning with the last day of pregnancy, women who were eligible for, applied for, and received medicaid under the State plan are eligible to receive pregnancy-related and postpartum services. We interpret "pregnancy related" as treatment of conditions or complications that exist or are exacerbated because of pregnancy.

"Postpartum services" are defined as services furnished to the women following the end of pregnancy that are needed for any health conditions or complications that are pregnancy related.

We propose to amend §§ 440.165, 440.210, and 440.220 of the Medicaid regulations, which contain regulatory provisions on services available to categorically and medically needy groups, to incorporate the COBRA provisions of section 9501(c) for expanded services to women who had been pregnant. We propose to amend § 440.250 to add a new paragraph (p) to incorporate the exception to the comparability of services requirement relating to the provision to pregnant women of services related to pregnancy and to other conditions that may complicate pregnancy. In addition, we propose to amend § 447.53 of the regulations deading with nurse-midwife services to revise the definition of the postpartum period (previously set at 6 weeks) to conform the length of the period to the amendments made under section 9501(c) of COBRA and section 4101(d) of OBRA '87. The postpartum period would be specified as the period which begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following the termination of pregnancy ends. We believe that this conforming change would be consistent with uniform administration and application of rules related of postpartum care.

Conforming Amendment Relating to Qualified Children

As summarized earlier, section 4101(c) of OBRA '87 revised section 9505(n)(2) of the Social Security Act to redefine the qualified children eligibility group as children who have not attained the age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8) and who are born after September 30, 1983 or born at an earlier date designated by the State. Previously, the age limit for coverage of children under this group was under 5 years. The amendment applied to medical assistance furnished on or after October 1, 1988. For fiscal year 1989, section 4101(c)(3)(B) of OBRA '87 specifies that the reference to children who have attained the "age of 7" is to be read to mean children who have attained the "age of 6." Thus, beginning October 1, 1988 States must provide Medicaid eligibility for all qualified children under age 6, and beginning October 1, 1989, must provide eligibility for all qualified children under age 7. We propose to make a conforming change to §§ 435.116(c) and 436.120(c) to incorporate this OBRA '87 change.

Children Receiving Adoption Assistance and Foster Care Maintenance Payments

Before enactment of COBRA, children who received adoption assistance and foster care maintenance payments under title IV–E of the Social Security Act were eligible for mandatory Medicaid coverage as recipients of cash assistance. The State that made the title IV–E payment was responsible for providing Medicaid, regardless of whether the child actually lived in the State. In addition, Medicaid was available to children receiving adoption assistance under title IV–E only after the child was placed for adoption and an interlocutory decree of adoption was issued or the adoption was finalized under a judicial order.

States also could cover children who were in a non-title IV–E adoption assistance program as an optional categorically needy group of financially eligible individuals under age 21 (or, at State option, under 20, 19, or 18) or reasonable classifications of these children under the provisions of section 1902(a)(10)(A)(ii) of the Act and § 435.222.

Sections 9529(a) and 12305 of COBRA amended titles XIX (section 1902(a)) and IV–E (section 473(b)) to specify that, for purposes of Medicaid eligibility, children who meet the requirements of section 473(b)(1) or (2) of the Act for whom an adoption assistance agreement is in effect or with respect to whom foster care maintenance payment are being made under title IV–E are deemed to be AFDC recipients in the State in which they actually reside rather than the State making the title IV–E payment.

Section 9529(b)(1) of COBRA added a new optional categorically needy group under section 1902(a)(10)(A)(ii)(VIII) of the Act. This new group allows States the option of providing Medicaid to a select group of children under age 21 (or, at State option, under age 20, 19, or 18)

with special medical or rehabilitative needs who are adopted under a publicly-funded adotion program (other than a program funded under title IV–E of the Act), regardless of the income and resources of the adoptive parents. Medicaid coverage may be extended to these children if (1) an adoption assistance agreement between the State and the adoptive parent(s), other than a title IV–E agreement, is in effect; (2) the State adoption assistance agency has determined that the child cannot be placed with adoptive parents without Medicaid coverge because the child has special needs for medical or rehabilitative care; and (3) the child was eligible for Medicaid under the State's plan before the agreement was entered into or would have been eligible under title IV–E at that time if the initial eligibility determination under title IV–E (which employs AFDC financial criteria) were not applied. Section 9529(b)(2) of COBRA provides that in cases of adoption assistance agreements entered into before the date of enactment of COBRA, April 7, 1986, the conditions under items (1) and (2) must be deemed to be met if the State adoption assistance agency determined that (a) at the time of the adoption placement, the child had special needs for medical or rehabilitative care that made the child difficult to place; and (b) there is in effect an adoption assistance agreement between the State and the adoptive parent(s). The condition in item (3) must be deemed to be met if the child was found by the State to be eligible for Medicaid before the adoption assistance agreement was entered into.

The provisions on State of residence under sections 9529(a) and 12305 of COBRA are effective on October 1, 1986. The provisions under section 9529(b) for the optional coverage of children with special needs who are under State adoption assistance agreements other than title IV–E agreements are effective on April 7, 1986, and apply regardless of the dates the agreements were entered into. However, recognition of adoption agreements entered into before April 7, 1986 does not provide authority for retroactive Medicaid coverage for periods prior to April 7, 1986. A State could have submitted a plan amendment that expands eligibility and made it effective retroactive to the date on which it began providing the expanded eligibility as long as the amendment was submitted within the calendar quarter in which the expansion began. Coverage of the optional group authorized by section 9529(b) of COBRA may begin no earlier than April 7, 1986.

As stated earlier, under sections 9529(a) and 12305 of COBRA, children receiving adoption assistance and foster care maintenance payments under title IV–E now are considered to be residents of the State in which they are actually living. This provision applies to children who are under an adoption assistance agreement, whether or not adoption assistance payments are provided and whether or not an interlocutory or other judicial decree of adoption has been issued.

Sections 9529(b) (1) and (2) of COBRA require that children in adoptions under the new optional categorically needy group have special needs for medical or rehabilitative care under which they cannot be placed with adoptive parents without Medicaid coverage. For children covered under adoption assistance agreements entered into prior to April 7, 1986 (section 9529(b)(2)), this special need for medical or rehabilitative care must exist prior to the adoption assistance agreement being entered into.

A State would be permitted to limit this new group to children who, before the execution of the agreement, were eligible for Medicaid or who would have been eligible for Medicaid under the State's plan. Children who were receiving or were eligible to receive Medicaid under any category under the plan may be eligible under section 9529(b) if all other conditions of eligibility specified are met (for example, a child may be receiving Medicaid as an AFDC recipient, as an SSI recipient, or as a blind or disabled child in a State using more restrictive requirements of eligibility than SSI).

In determining whether a child would have been eligible for Medicaid, States have the option of using either AFDC financial eligibility requirements or certain aspects of title IV–E financial requirements used to determine eligibility for foster care maintenance payments. The title IV–E foster care financial eligibility determination involves two separate processes. First, title IV–E makes a one-time determination of whether the child would be eligible for AFDC. This determination uses title IV–A rules which require that the child be deprived of parental support and care and which consider the income and resources of the legal parents and other responsible relatives. If the child meets this test, thereafter title IV–E will consider only the child's needs, income, and resources in determining continued eligibility for and the amount of the title IV–E foster care payment. It is this latter step which comprises the title IV–E eligibility standards and methodologies referenced in section 1902(a)(10)(A)(ii)(VIII)(cc) of the Act that the State may use instead of the AFDC financial requirements.

Under this new group under section 9529(b) of COBRA, once initial eligibility has been established, the State would not have to redetermine financial eligibility as long as the adoption agreement is in force. This applies to adoption assistance agreements entered into before, on, or after April 7, 1986.

Section 9529(b) allows eligibility under the optional categorically needy group for all qualified individuals who were eligible for Medicaid under the plan before entering into the adoption assistance agreement. This includes individuals who were receiving Medicaid under the plan as medically needy or would have been eligible to receive Medicaid as medically needy had they applied in the 3-month retroactive period immediately before the agreement is signed.

States would still be permitted to provide Medicaid to other individuals under age 21 (or, at State option, under age 20, 19, or 18) under adoption assistance agreements under § 435.222 (Ribicoff children). Individuals covered under § 435.222 differ from the new COBRA group in several respects. First, the Ribicoff children do not have to have a special medical or rehabilitative need. Second, they must meet the income and resource requirements of the State's AFDC plan.

We propose to amend §§ 435.403 and 436.403 which specify how to determine the State of residence for Medicaid recipients to reflect the COBRA change that the State of residence for children for whom a title IV–E adoption assistance agreement is in effect and for whom title IV–E foster care maintenance payments are being made is the State where the child actually lives. We also propose to amend § 431.52 on making payments for services furnished out of State to delete the procedure for payments for children in adoptions and foster care under title IV–E since the change in the statute specifies the State of residence as where the child is actually living. We propose to amend §§ 435.115 and 436.114 to conform them to the statute by adding children for whom adoption assistance or foster care maintenance payments are made as a deemed group of AFDC recipients. We would retain §§ 435.118 and 436.116 that provide for coverage as a separate mandatory categorically needy group children for whom adoption assistance or foster care maintenance payments under title IV–E of the Act are made.

We propose to add new §§ 435.227 and 436.224 to provide for optional

categorically needy coverage of children under 21 who have special medical or rehabilitative needs, who are under State adoption assistance agreements (other than title IV–E agreements) that are entered into before, on, or after April 7, 1986, and who meet the eligibility requirements specified in the statute.

Disabled Widows and Widowers

Section 134 of the Social Security Amendments of 1983, Pub. L. 98–21, raised the amount of social security disability benefits for disabled widows and widowers aged 50 to 59, through elimination of a reduction factor in the actuarial formula, effective January 1984. As a result of the increase, some beneficiaries lost SSI benefits, and consequently, categorically needy Medicaid.

Section 12202 of COBRA added a new section 1634(b) to the Social Security Act to allow those eligible widows and widowers who were receiving social security disability benefits and who lost SSI eligibility (and consequently categorically needy Medicaid) because of the January 1984 disability benefit increase described above to file an application for Medicaid protection with the State Medicaid agency within 15 months, beginning April 1986, and to be deemed to be receiving SSI benefits for the purpose of Medicaid eligibility. (Section 9108 of OBRA '87 extended this deadline for filing an application for Medicaid protection to July 1, 1988). The provision further directs the Secretary to inform States of the identities of affected individuals, and requires States to solicit applications for Medicaid coverage from these individuals who may qualify for Medicaid and to process their applications promptly. Medicaid eligibility under section 12202 may not be effective earlier than July 1, 1986.

As provided for under section 1634(b) of the Act as added by COBRA, for purposes of Medicaid eligibility in States that cover SSI recipients, individuals are deemed to be recipients of SSI and therefore eligible for Medicaid as categorically needy if they—

1. Were entitled to title II monthly insurance benefits for December 1983;
2. Were entitled to and received widow's or widower's disability benefits under section 202 (e) or (f) of the Act for January 1984;
3. Because of the increase in widow's and widower's benefits resulting from elimination of the reduction factor under Pub. L. 98–21, were ineligible for SSI, a mandatory State supplement, or an optional State supplement in the first month in which the increase was paid (and in which a retroactive payment of the increase for prior months was not made);
4. Have been continuously entitled to widow's or widower's benefits since the first month of the increase; and
5. Would be eligible for SSI, a mandatory State supplement, or an optional State supplement if this increase and subsequent cost-of-living adjustments in widow's or widower's benefits under section 215(i) were deducted from income.

States that adopt more restrictive eligibility criteria than SSI under the authority of section 1902(f) of the Act must also apply the above criteria to determine whether individuals are considered deemed SSI recipients for Medicaid purposes under section 1634(b) of the Act as amended by COBRA and OBRA '87. If an individual meets the described criteria, he or she must be considered as categorically needy in determining if he or she becomes eligible for Medicaid. However, in section 1902(f) States the status of a deemed SSI recipient does not necessarily guarantee eligibility for Medicaid. Rather, the individual must also meet the more restrictive criteria the State uses for Medicaid eligibility instead of SSI criteria. With respect to income, the individual may have to spend down part of his or her funds for medical care to meet the State's eligibility criteria.

On May 12, 1988, the United States District Court for the Western District of Missouri, in *Darling* v. *Bowen*, No. 87–6067–CV–SJ–6 issued an order against the Department governing the treatment of individuals who are covered under section 1634(b) of the Act in States which elect the option under section 1902(f) of the Act. The court held that when section 1634(b) of the Act "deems" an individual to be an SSI recipient for Medicaid purposes, it means that section 1902(f) States must consider the individual to have no greater income than the amount which would qualify him or her for SSI. The court ordered the Department to withdraw its instructions which would have permitted section 1902(f) States greater flexibility in this area.

The Department believes that the court's decision is incorrect, but will abide by it unless we can secure a stay of the court's order or have the order overturned on appeal. If we succeed in securing a reversal of the *Darling* order, we would permit section 1902(f) States to treat individuals protected under section 1634(b) of the Act in the manner described below as reflected in the proposed regulation text. To determine the amount of spenddown, section 1902(f) States may elect to disregard all, part, or none of the amount of the increase under Pub. L. 98–21 and subsequent cost-of-living increases (up to the amount that made him or her ineligible for SSI) in determining whether the individual is eligible for Medicaid as categorically needy under their more restrictive eligibility criteria. This treatment of individuals deemed to be SSI recipients under section 1634(b) in section 1902(f) States is identical to that specified in our regulation at 42 CFR 435.135 with respect to individuals deemed to be SSI recipients by virtue of section 503 of Pub. L. 94–566 (the Pickle Amendment).

SSI States have the option of providing categorically needy Medicaid eligibility to recipients of optional State supplement payments as cash assistance recipients. States that have elected this option to provide Medicaid to recipients of optional State supplements as cash assistance recipients must extend Medicaid entitlement to the groups of widows and widowers as provided for under section 12202 of COBRA. However, States that do not provide Medicaid to recipients of optional State supplements and States exercising the option under section 1902(f) that do not provide Medicaid to individuals simply because of SSI or optional State supplementary payment recipient status are not required to extend Medicaid entitlement to these groups. Individuals who are deemed to be mandatory State supplementary payment recipients would continue to get Medicaid as categorically needy.

Medicaid eligibility (as a "deemed SSI recipient") under section 1634(b) of the Act, as added by COBRA and amended by OBRA '87, is available only to individuals who file a written general application for Medicaid benefits before July 1, 1988. Eligibility may not begin before July 1, 1988.

The Medicaid agency is required to notify affected individuals who have been identified by HHS of their potential Medicaid eligibility under the section 1634(b) provision and invite each of these individuals to file a written application for Medicaid benefits. Even States that elect the option under section 1902(f) and that do not elect to afford qualifying section 1634(b) individuals with the income disregard they would have received in SSI States must notify these individuals of the right to apply for section 1634(b) status during the period in which they are required to file to preserve their right to this status. This is because an individual who moves from the section 1902(f) State into an SSI State needs to have a means of perfecting the section

1634(b) status. Also, a State that currently elects the section 1902(f) option might in the future become an SSI State or elect a medically needy program. Either of these changes could make section 1634(b) status relevant to individuals in those States even though it may not be relevant at the present time.

Section 9116 of OBRA '87 also amended section 1634 of the Social Security Act. Under current law (section 1611(e)(2) of the Social Security Act) SSI beneficiaries are required to apply for and obtain any annuity, pension, retirement, or disability benefits for which they are eligible. Section 9116 of OBRA '87 added a new section 1634(d) to allow widows and widowers between age 60 and 64 who lose SSI eligibility (and consequently categorically needy Medicaid) because they become entitled to and received social security disability benefits (as required under section 1611(e)(2)), to be deemed to be SSI recipients for purposes of Medicaid eligibility. This would enable these widows and widowers in most States to continue Medicaid eligibility until they become eligible for Medicare.

Under the OBRA '87 provision, for purposes of Medicaid eligibility, in States that cover SSI recipients, individuals are deemed to be recipients of SSI and therefore eligible for Medicaid if they—

(1) Are at least age 60;

(2) Are eligible for and receiving early widow's or widower's diability benefits under section 202(e) or (f) (or under any other provisions of section 202 if they are also eligible under subsections (e) or (f)) of the Act;

(3) Are not entitled to hospital insurance benefits under Medicare Part A; and

(4) Because of receipt of early widow's or widower's disability benefits under section 202 of the Act, are ineligible for SSI benefits or State supplementary payments under section 1616(a) of the Act.

These individuals are deemed to be recipients of SSI for purposes of Medicaid as long as they would be eligible for SSI or State supplementary payments in the absence of widow's or widower's disability benefits under section 202 and are not entitled to hospital insurance under Medicare Part A.

Individuals who are deemed under section 1634(d) to be recipients of optional State supplementary payments are accorded the Medicaid status which the State provides to actual recipients of those payments. As with individuals deemed to be SSI recipients under section 1634(b), individuals who have this status under section 1634(d) do not automatically become Medicaid eligible in States which exercise the option under section 1902(f). In applying their Medicaid eligibility criteria which are more restrictive than SSI to these individuals, these States may elect to disregard all, part, or none of the amount of the early widow's or widower's disability benefits under section 202 of the Act in determining the amount of the individual's income for purposes of Medicaid eligibility.

The Social Security Administration is required to provide notification to individuals identified under the section 1634(d) provision as of April 1, 1988. Upon receipt of the written Medicaid application, the Medicaid agency must promptly determine whether the individual is eligible for Medicaid under the current regulations for processing applications under §§ 435.911 through 435.914.

SSI recipient status for purposes of Medicaid eligibility under section 1634(d) of the Act, as added by OBRA '87, is available to any individual regardless of whether he or she lost SSI benefits due to entitlement to early widow's or widower's insurance benefits under section 202 before, on, or after December 22, 1987. However, eligibility for Medicaid may not begin before July 1, 1988.

We propose to add a new § 435.137 under the mandatory categorically needy groups of individuals that must be covered in Part 435, Subpart B, to provide for Medicaid coverage of disabled widows or widowers who are deemed to be SSI recipients under section 1634(b) of the Act as amended by section 12202 of COBRA. We propose to add a new § 435.138 to provide for Medicaid coverage of disabled widows or widowers age 60 or over who are deemed to be SSI recipients under section 1634(d) of the Act as amended by section 9116 of OBRA '87.

Clarification of State Plan Requirements and Eligibility Requirements

Section 9526 of COBRA added a new section 1920 to the Social Security Act that identifies sections of the Act other than title XIX and other laws that directly affect the Medicaid program. Since enactment of COBRA, several changes have been made to section 1920: Section 9407(b) of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, enacted on October 21, 1986 redesignated section 1920 as section 1921. Section 1895 of the Tax Reform Act of 1986, Pub. L. 99–514, enacted on October 22, 1986, and section 6(c) of the Employment Opportunities for Disabled Americans Act, Pub. L. 99–643, enacted on November 10, 1986, further amended section 1921 to include additional references to laws and to make technical changes. Section 5(b) of the Medicare and Medicaid Patient and Program Protection Act of 1987, Pub. L. 100–93, enacted on August 18, 1987, redesignated section 1921 as 1922. Several sections of OBRA '87 (sections 4211(a) (erroneously cited in the statute as 4111(a)) and 4118(p)(9)) redesignated section 1922 as section 1923 and added other references to laws. The redesignated section 1923 of the Act (which in some instances in the OBRA '87 provisions is incorrectly cited as section 1922 and 1925) allows users to easily locate provisions of laws other than title XIX that make additional individuals eligible for Medicaid and that establish additional requirements for State plans to be approved under Medicaid. Most of the citations in section 1923 are already referenced in the Medicaid regulations under a section that lists the bases of the regulations (§§ 435.3 and 436.2) or in the regulation text of the descriptions of the groups covered and the availability of Federal financial participation.

We propose to amend §§ 435.3 and 436.2 to include those references cited in section 1923 of the Act not previously included in the regulations that would be implemented in the regulations in this document. We will include any remaining references from section 1923 in the basis sections of regulation documents under development in the Department as appropriate, when they are issued in final. In addition, we propose to update the existing regulations under § 435.1011 relating to the availability of Federal financial participation based on a State having met the requirements for maintenance of optional State supplement expenditures under section 1618 of the Act (one of the references included in section 1923). In recent years, section 1618 of the Act has undergone a number of changes (including those contained in section 12201 of COBRA) relating to, among other areas, how a State may maintain its supplementary payments. We propose to revise § 435.1011 to remove the outdated provisions and merely to refer to section 1618 of the Act which incorporates these changes.

Condition of Eligibility

Section 9503 of COBRA amended section 1912 of the Social Security Act to add to two existing conditions a third condition of eligibility for Medicaid applicants and recipients relating to the collection of medical support and other payments from liable third parties.

Under previous requirements, applicants and recipients, as a condition of eligibility, must assign their rights to medical support and to payments for medical care from any third party and must cooperate with the State agency in obtaining such support and payments. Under section 1912 of the Act, as amended by section 9503 of COBRA, Medicaid applicants and recipients also, as a condition of eligibility, must cooperate with the State in identifying and providing information to assist the State in pursuing any third party who may be liable to pay for medical assistance provided under the approved State plan. This condition may be waived if the State agency determines that the individual has good cause for refusing to cooperate (by applying standards developed by the Secretary).

The provision under section 9503 of COBRA is effective on July 1, 1986, unless State legislation, other than legislation appropriating funds, is needed for the State Medicaid plan to meet the requirements. In order for the Secretary to determine if State legislation is required, a State must submit to the appropriate Regional Administrator for HCFA a detailed written opinion from the State's attorney general explaining why State legislation is required or a clear opinion from a court of competent jurisdiction. If the Secretary determines that State legislation is needed, these statutory provisions apply the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after April 7, 1986.

We propose to revise §§ 433.137, 433.145, 435.604, and 436.604 of the Medicaid regulations to incorporate this additional condition of eligibility. We also propose to revise § 433.147, which contains procedures for obtaining cooperation, to conform to the additional condition. We already have developed and issued standards for determining whether an individual has good cause for refusing to cooperate with the State for the two conditions of the Act relating to obtaining medical support and other third party payments that existed before COBRA. These standards appear under § 433.147. We believe that these standards are applicable equally to the new condition of eligibility and there is no need to develop separate standards for waiver of cooperation for good cause for the new condition. Therefore, we propose to revise § 433.147 (c) and (d) to make the standards applicable to the new condition of eligibility as well.

Certain Disabled Children Cared for at Home

Section 134 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) amended section 1902(e) of the Social Security Act by adding a paragraph (3) to give States the option of treating certain children under age 19 who are living at home and who qualify as disabled under section 1614(a) of the Act as SSI recipients or State supplementary payment recipients for purposes of Medicaid eligibility. Under the TEFRA provision, States may extend eligibility to these children who would be eligible for SSI or a State supplement, and therefore eligible for Medicaid, if the children were in a medical institution. However, section 4118(c) of OBRA '87 revised the TEFRA amendment to section 1902(e) that specified that eligibility under section 1902(e)(3) may be extended to a child who would be eligible for SSI or a State supplementary payment if the child were in an institution. Section 4118(c) replaced the condition of the child being eligible for *SSI or a State supplement* with the condition that the child would be eligible for *Medicaid* if he or she were in an institution. The State is required to determine that (a) the child requires the level of care provided in an institution; (b) it is appropriate to provide this care outside the institution; and (c) the estimated Medicaid cost of care at home is no more expensive than the estimated Medicaid cost of institutional care. In the interest of affording States maximum flexibility in the administration of the Medicaid program, we are not imposing a specific method to be used to determine cost-effectiveness of care at home. However, we are proposing that the State agency submit, as part of its State plan, a description of the method by which the agency will determine the cost-effectiveness of caring for disabled children at home.

The TEFRA provision has been in effect since October 1, 1982, but the Medicaid regulations have not been revised to reflect this optional categorically needy group. The OBRA '87 provision is effective as if it were included in section 134 of TEFRA. As a result of the OBRA '87 amendment, the optional coverage group is available now in Guam, Puerto Rico, and the Virgin Islands. We propose to add new §§ 435.225 and 436.225 to incorporate this group and make conforming amendments to §§ 435.3, 435.724, and 436.2.

Response to Public Comments

Because of the large volume of public comments that we usually receive on notices of proposed rulemaking, we cannot acknowledge or respond to them individually. However, we will address all public comments received on this document in the preamble to the document in which these proposed regulations are issued in final form.

Impact Analyses

Executive Order 12291 and Regulatory Flexibility Act of 1980 (Pub. L. 96–354).

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that is likely to meet criteria for a "major rule." A major rule is one that would result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we prepare and publish a regulatory flexibility analysis, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) for any regulation that will have a significant impact on a substantial number of small entities. A small entity is a small business, a nonprofit enterprise, or a government jurisdiction (such as a county or township) with a population of less than 50,000.

These proposed regulatory amendments would conform the regulations to legislative provisions. The expenditures under the provisions of the proposed regulations are required by the laws and not by the regulations and will be incurred regardless of the promulgation of regulations.

These proposed regulations, in themselves, do not meet any of the criteria for a major rule. In addition, they primarily affect States and individuals, which are not considered small entities for purposes of the RFA. Therefore, we have determined, and the Secretary certifies, that a regulatory impact analysis and a regulatory flexibility analysis are not required.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603

of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant impact on the operations of a substantial number of small rural hospitals. Paperwork Reduction Act of 1980 (Pub. L. 96–511).

These proposed regulations do not impose information collection requirements. Consequently, they do not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families and Dependent Children, Grant programs-health, Medicaid, Supplemental Security Income (SSI).

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs-health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Chapter IV is proposed to be amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as follows:

1. The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. Section 431.52 is amended by revising paragraphs (a) and (b) to read as follows:

§ 431.52 Payments for services furnished out of State.

(a) *Basis and purpose.* This section implements section 1902(a)(16) of the Act, which authorizes the Secretary to prescribe State plan requirements for furnishing Medicaid to State residents who are absent from the State.

(b) *Payment for services.* A State plan must provide that the State will furnish Medicaid to a recipient who is a resident of the State while that recipient is in another State, to the same extent that Medicaid is furnished to residents in the State, when:

(1) Medical services are needed because of a medical emergency;

(2) Medical services are needed because the recipient's health would be endangered if he were required to travel to his State of residence;

(3) The State determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other State; or

(4) It is general practice for recipients in a particular locality to use medical resources in another State.

* * * * *

PART 433—STATE FISCAL ADMINISTRATION

B. Part 433 is amended as follows:

1. The authority citation for Part 433 continues to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), and 1396k, unless otherwise noted.

2. The table of contents for Part 433 is amended by revising the section title of § 433.147 to read as follows:

* * * * *

Sec.

* * * * *

433.147 Cooperation in establishing paternity, obtaining support, and identifying and providing information to assist in pursuing liable third parties.

* * * * *

3. Section 433.137 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 433.137 State plan requirements.

* * * * *

(b) A State plan must provide that—

(1) The requirements of §§ 433.145 through 433.148 are met for assignment of rights of benefits, cooperation with the agency in obtaining medical support or payments, and cooperation in identifying and providing information to assist the State in pursuing any liable third parties; and

(2) The requirements of §§ 433.151 through 433.154 are met for cooperative agreements and incentive payments for third party collections.

(c) The requirements of paragraph (b)(1) of this section relating to assignment of rights to benefits and cooperation in obtaining medical support or payments and paragraph (b)(2) of this section are effective for medical assistance furnished on or after October 1, 1984. The requirements of paragraph (b)(1) of this section relating to cooperation in identifying and providing information to assist the State in pursuing liable third parties are effective for medical assistance furnished on or after July 1, 1986.

4. Section 433.145 is revised to read as follows:

§ 433.145 Assignment of rights to benefits—State plan requirements.

(a) A State plan must provide that, as a condition of eligibility, each legally able applicant and recipient must assign his rights, or the rights of any other individual eligible under the plan for whom he can legally make an assignment, to medical support or other third party payments for medical care to the Medicaid agency, cooperate with the agency in obtaining medical support or payments, and cooperate in identifying and providing information to assist the State in pursuing third parties who may be liable to pay for care and services under the plan.

(b) A State plan must provide that the requirements for assignments, cooperation in establishing paternity and obtaining support, and cooperation in identifying and providing information to assist the State in pursuing any liable third party under §§ 433.146 through 433.148 are met.

(c) A State plan must provide that the assignment of rights to benefits obtained from an applicant or recipient is effective only for services that are reimbursed by Medicaid.

5. Section 433.147 is amended by revising the section title and paragraphs (a), (b)(5), (c), and (d) to read as follows ((b) introducing text is republished):

§ 433.147 Cooperation in establishing paternity, obtaining support, and identifying and providing information to assist in pursuing liable third parties.

(a) *Scope of requirement.* The agency must require the individual who assigns his rights to cooperate in—

(1) Establishing paternity of a child born out of wedlock for whom the individual can legally assign rights;

(2) Obtaining medical care support and payments for himself or herself and any other person for whom the individual can legally assign rights; and

(3) Identifying and providing information to assist the State in pursuing any liable third party.

(b) *Essentials of cooperation.* As part of a cooperation, the agency may require an individual to—

* * * * *

(5) Take any other reasonable steps to assist in establishing paternity and securing medical support and payments, and in identifying and providing information to assist the State in pursuing any liable third party.

(c) *Waiver of cooperation for good cause.* The agency must waive the requirements in paragraphs (a) and (b) of this section if it determines that the individual has good cause for refusing to cooperate.

(1) With respect to establishing paternity of a child born out of wedlock or obtaining medical care support and payments, or identifying or providing information to assist the State in pursuing any liable third party for a child for whom the individual can legally assign rights, the agency must find that cooperation is against the best interests of the child, in accordance with factors specified for the Child Support Enforcement Program at 45 CFR Part 232. If the State title IV–A agency has made a finding that good cause for refusal to cooperate does or does not exist, the Medicaid agency must adopt that fining as its own for this purpose.

(2) With respect to obtaining medical care support and payments for an individual and identifying and providing information to assist in pursuing liable third parties in any case not covered by paragraph (c)(1) of this section, the agency must find that cooperation is against the best interests of the individual or the person to whom Medicaid is being furnished because it is anticipated that cooperation will result in reprisal against, and cause physical or emotional harm to, the individual or other person.

(d) *Procedures for waiving cooperation.* With respect to establishing paternity, obtaining medical care support and payments, or identifying and providing information to assist the State in pursuing liable third parties for a child for whom the individual can legally assign rights, the agency must use the procedures specified for the Child Support Enforcement Program at 45 CFR Part 232. With respect to obtaining medical care support and payments or to identifying and providing information to assist the State in pursuing liable third parties for any other individual, the agency must adopt procedures similar to those specified in 45 CFR Part 232, excluding those procedures applicable only to children.

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

C. Part 435 is amended as follows:

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents is amended by revising the undesignated heading appearing before § 435.116, redesignating § 435.118, as § 435.119 and adding new §§ 435.118, 435.137, 435.138, 435.225, and 435.227 to read as follows:

Sec.

* * * * *

Mandatory Coverage of Pregnant Women, Children under 8, and Newborn Children

* * * * *

435.118 Pregnant women eligible for extended coverage.

* * * * *

435.119 Children for whom adoption assistance or foster care maintenance payments are made.

* * * * *

435.137 Disabled widows and widowers who would be eligible for SSI except for the increase in disability benefits resulting from elimination of the reduction factor under Pub. L. 98–31.

* * * * *

435.138 Disabled widows and widowers aged 60 through 64 who would be eligible for SSI benefits except for receipt of early social security benefits.

* * * * *

Options for Coverage of Families and Children

* * * * *

435.225 Individuals under age 19 who would be eligible for Medicaid if they were in a medical institution.

435.227 Individuals under age 19 who are under State adoption assistance agreements.

* * * * *

3. In § 435.3, paragraph (a) is republished and several entries are added in numerical order to read as follows:

§ 435.3 Basis.

(a) This part implements the following sections of the Act and public laws which state eligibility requirements and standards:

* * * * *

473(b) Eligibility of children in foster care and adopted children who are deemed AFDC recipients.

* * * * *

1634(b) Preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula.

1634(d) Individuals who lose eligibility for SSI benefits due to entitlement to early widow's or widower's social security disability benefits under section 202(e) of (f) of the Act.

* * * * *

1902(e)(3) Optional coverage of certain disabled children being cared for at home.

* * * * *

1902(e)(5) Eligibility of pregnant women for extended coverage for specified postpartum period after pregnancy ends.

* * * * *

1912(a) Conditions of eligibility.

* * * * *

4. Section 435.115 is amended by adding a new paragraph (e) to read as follows:

§ 435.115 Individuals deemed to be receiving AFDC.

* * * * *

(e) The State must deem to be receiving AFDC individuals described in section 473(a)(1) of the Act—

(1) For whom an adoption assistance agreement is in effect under title IV–E of the Act, whether or not adoption assistance is being provided or an interlocutory or other judicial decree of adoption has been issued; or

(2) For whom foster care maintenance payments are made under title IV–E of the Act.

4.a The undesignated heading preceding § 435.116 is revised to read as follows:

Mandatory Coverage of Pregnant Women, Children under 8, and Newborn Children

5. Section 435.116 is amended by revising paragraph (c) to read as follows:

§ 435.116 Qualified pregnant women and children.

* * * * *

(c) The agency must provide Medicaid to children who meet all of the following criteria:

(1) They are born after September 30, 1983, or, at State option, effective no earlier than April 1, 1986, an earlier designated date;

(2) Effective October 1, 1988, they are under age 6 (or if designated by the State, any age that exceeds age 6 but does not exceed age 8), and effective October 1, 1989, they are under age 7 (or if designated by the State, any age that exceeds age 7 but does not exceed age 8); and

(3) They meet the income and resource requirements of the State's approved AFDC plan.

§ 435.119 [Redesignated from 435.118]

6. Section 435.118 is redesignated as § 435.119.

7. A new § 435.118 is added to Subpart B preceding the center heading for old 435.118 to read as follows:

§ 435.116 Pregnant women eligible for extended coverage.

(a) The agency must provide categorically needy Medicaid eligibility to women who, while pregnant, were eligible for, applied for, and received Medicaid as categorically needy on the day that their pregnancy ends for an extended period following termination of pregnancy. This period extends from the last day of pregnancy through the end of the month in which a 60-day period, beginning on the last day of the pregnancy, ends. Eligibility must be provided regardless of changes in the woman's financial circumstances that may occur within this extended period. These women are eligible for all pregnancy-related and postpartum services under the plan for the extended period.

(b) The provisions of paragraph (a) of this section apply to medical assistance furnished on or after April 7, 1986.

8. A new § 435.137 is added to read as follows:

§ 435.137 Disabled widows and widowers who would be eligible for SSI except for the increase in disability benefits resulting from elimination of the reduction factor under Pub. L. 98-21.

(a) If the agency provides Medicaid to aged, blind, or disabled individuals receiving SSI or State supplements, the agency must provide Medicaid to disabled widows and widowers who—

(1) Became ineligible for SSI or a mandatory or optional State supplement as a result of the elimination of the additional reduction factor for disabled widows and widowers under age 60 required by section 134 of Pub. L. 98-21, and for purposes of title XIX, are deemed to be title XVI payment recipients under section 1634(b) of the Social Security Act; and

(2) Meet the conditions of paragraphs (b) and (e) of this section.

(b) The individuals must meet the following conditions:

(1) They were entitled to monthly OASDI benefits under title II of the Act for December 1983;

(2) They were entitled to and received widow's or widower's disability benefits under section 202 (e) or (f) of the Act for January 1984;

(3) They became ineligible for SSI or a mandatory or optional State supplement in the first month in which the increase under Pub. L. 98-21 was paid (and in which a retroactive payment for that increase for prior months was not made);

(4) They have been continuously entitled to widow's or widower's disability benefits under section 202 (e) or (f) from the first month that the increase under Pub. L. 98-21 was received; and

(5) They would be eligible for SSI benefits or a mandatory or optional State supplement if the amount of the increase under Pub. L. 98-21 and subsequent cost-of-living adjustments in widow's or widower's benefits under section 215(i) of the Act were deducted from their income.

(c) If the agency adopts more restrictive eligibility requirements than those under SSI, it must provide Medicaid to individuals specified in paragraph (a) of this section on the same basis as Medicaid is provided to individuals continuing to receive SSI or a mandatory or optional State supplement. If the individual incurs enough medical expenses to reduce his or her income to the financial eligibility standard for the categorically needy under the State's more restrictive eligibility criteria, the agency must cover the individual as categorically needy. In determining the amount of his or her income, the agency may deduct the amount of the increase resulting from the elimination reduction factor under Pub. L. 98-21 that made him or her ineligible for SSI or a State supplement, up to the amount that made him or her ineligible for SSI.

(d) The agency must notify each individual who may be eligible for Medicaid under this section of his or her potential eligibility, in accordance with instructions issued by the Secretary.

(e) Individuals who may be eligible under this section must file a written application for Medicaid before July 1, 1988, to obtain protected Medicaid coverage.

9. A new § 435.138 is added to read as follows:

§ 435.138 Disabled widows and widowers aged 60 through 64 who would be eligible for SSI except for early receipt of social security benefits.

(a) If the agency provides Medicaid to aged, blind, or disabled individuals receiving SSI or State supplements, the agency must provide Medicaid to disabled widows and widowers who—

(1) Are at least age 60;

(2) Are not entitled to hospital insurance benefits under Medicare Part A; and

(3) Become ineligible for SSI or a State supplement because of mandatory application (under section 1611(e)(2)) for and receipt of widow's or widower's social security disability benefits under section 202 (e) or (f) (or any other provision of section 202 if they are also eligible for benefits under subsections (e) of (f)) of the Act.

For purposes of title XIX, individuals who meet these requirements are deemed to be title XVI payment recipients under section 1634(d) of the Act.

(b) If the agency adopts more restrictive eligibility requirements than those under SSI, it must provide Medicaid to individuals specified in paragraph (a) of this section on the same basis as Medicaid is provided to individuals continuing to receive SSI or a mandatory or optional State supplement. If the individual incurs enough medical expenses to reduce his or her income to the financial eligibility standard for the categorically needy under the State's more restrictive eligibility criteria, the agency must cover the individual as categorically needy. In determining the amount of his or her income, the agency may deduct all, part, or none of the amount of the social security disability benefits that made him or her ineligible for SSI or a State supplement, up to the amount that made him or her ineligible for SSI.

(c) Individuals who may be eligible under this section must file a written application for Medicaid. Medicaid coverage may begin no earlier than July 1, 1988.

(d) The agency must determine whether individuals may be eligible for Medicaid under this section.

10. A new § 435.225 is added to Subpart C to read as follows:

§ 435.225 Individuals under age 19 who would be eligible for Medicaid if they were in a medical institution.

(a) The agency may provide Medicaid to children 18 years of age or younger who qualify under section 1614(a) of the Act, who would be eligible for Medicaid if they were in a medical institution, and

who are receiving, while living at home, medical care that would be provided in a medical institution.

(b) If the agency elects the option provided by paragraph (a) of this section, it must determine, in each case, that the following conditions are met:

(1) The child requires the level of care provided in a hospital, SNF, or ICF.

(2) It is appropriate to provide that level of care outside such an institution.

(3) The estimated Medicaid cost of care outside an institution is no higher than the estimated Medicaid cost of appropriate institutional care.

(c) The agency must specify in its State plan the method by which it determines the cost-effectiveness of caring for disabled children at home.

11. A new § 435.227 is added to Subpart C to read as follows:

§ 435.227 Individuals under age 21 who are under State adoption assistance agreements.

(a) The agency may provide Medicaid to individuals under the age of 21 (or, at State option, age 20, 19, or 18)—

(1) For whom an adoption agreement (other than an agreement under title IV–E) between the State and the adoptive parent(s) is in effect;

(2) Who, the State agency responsible for adoption assistance, has determined cannot be placed with adoptive parents without Medicaid because the child has special needs for medical or rehabilitative care; and

(3) Who meet either of the following:

(i) Were eligible for Medicaid under the State plan before the adoption agreement was entered into; or

(ii) Would have been eligible for Medicaid before the adoption agreement was entered into, if the eligibility standards and methodologies of the title IV–E foster care program were used without employing the threshold title IV–A eligibility determination.

(b) For adoption assistance agreements entered into before April 7, 1986—

(1) The agency must deem the requirements of paragraphs (a) (1) and (2) of this section to be met if the State adoption assistance agency determines that—

(i) At the time of the adoption placement, the child had special needs for medical or rehabilitative care that made the child difficult to place; and

(ii) There is in effect an adoption assistance agreement between the State and the adoptive parent(s).

(2) The agency must deem the requirements of paragraph (a)(3) of this section to be met if the child was found by the State to be eligible for Medicaid before the adoption assistance agreement was entered into.

12. In § 435.301, the introductory texts of paragraphs (b) and (b)(1) are republished and a new paragraph (b)(1)(iv) is added to read as follows:

§ 435.301 General rules.

* * * * *

(b) If the agency chooses this option, the following provisons apply:

(1) The agency must provide Medicaid to the following individuals who meet the requirements of paragraph (a) of this section:

* * * * *

(iv) Women who, while pregnant, were eligible for, applied for, and received Medicaid as medically needy on the day that their pregnancy ends. The agency must provide medically needy eligibility to these women for an extended period following termination of pregnancy. This period extends from the last day of the pregnancy through the end of the month in which a 60-day period, beginning on the last day of pregnancy, ends. Eligibility must be provided, regardless of changes in the woman's financial circumstances that may occur within this extended period. These women are eligible for all pregnancy-related and postpartum services under the plan for the extended period.

* * * * *

13. Section 435.403 is amended by revising paragraph (g) to read as follows:

§ 435.403 State residence.

* * * * *

(g) *Individuals receiving Title IV–E payments.* For individuals of any age who are receiving Federal payments for foster care and adoption assistance under title IV–E of the Social Security Act, the State of residence is the State where the child lives.

* * * * *

14. Section 435.604 is revised to read as follows:

§ 435.604 Assignment of rights to benefits.

(a) As a condition of eligibility, the agency must require legally able applicants and recipients to assign rights to medical support or other third party payments to the Medicaid agency, to cooperate with the agency in obtaining medical support or payments, and to cooperate with the agency in identifying and providing information to assist the State in pursuing any third party who may be liable to pay for care and services under the plan. (Part 433, Subpart D, contains specific requirements for these assignments.)

(b) The requirements for assignment of rights must be applied uniformly for all groups covered under the plan.

(c) The requirements of paragraph (a) of this section for the assignment of rights to medical support and other payments and cooperation in obtaining medical support and payments are effective for medical assistance furnished on or after October 1, 1984. The requirement for cooperation in identifying and providing information for pursuing liable third parties is effective for medical assistance furnished on or after July 1, 1986.

15. In Subpart H, § 435.724 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 435.724 Financial responsibility of parents for blind or disabled children.

(a) If the agency provides Medicaid to SSI recipients, it must meet the requirements of this section in determining eligibility of blind and disabled children under the optional coverage of §§ 435.210, 435.211, 435.225, and 435.231.

* * * * *

(d) Under the option provided by § 435.225, the income and resources of the parent or the parent's spouse are not considered available to the disabled child receiving care at home.

16. Section 435.1011 is amended by revising the section title and paragraph (b) to read as follows:

§ 435.1011 Requirement for maintenance of optional State supplement expenditures.

* * * * *

(b) FFP in Medicaid expenditures is not available during any period in which the State does not have in effect an agreement with the Secretary under section 1618 of the Act to maintain its supplementary payments.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

D. Part 436 is amended as follows:

1. The authority citation for Part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. The table of contents is amended by adding a new § 436.122 under Subpart B and adding new §§ 436.224 and 436.225 under Subpart C to read as follows:

Sec.

* * * * *

Subpart B—Mandatory Coverage of the Categorically Needy

* * * * *

436.122 Pregnant women eligible for extended coverage.

* * * * *

Subpart C—Options for Coverage as Categorically Needy

* * * * *

Options for Coverage of Families and Children

* * * * *

436.224 Individuals under age 21 who are under State adoption assistance agreements.

436.225 Individuals under age 19 who would be eligible for Medicaid if they were in a medical institution.

* * * * *

3. In § 436.2, paragraph (a) introductory text is republished and new entries are added in numerical order to read as follows:

§ 436.2 Basis.

(a) This part implements the following sections of the Act and public laws which state requirements and standards for eligibility:

* * * * *

473(b) Eligibility of children in foster care and adopted children who are deemed AFDC recipients.

* * * * *

1902(e)(3) Optional coverage of certain disabled children at home.

* * * * *

1902(e)(5) Eligibility of pregnant women for extended coverage for a specified period after pregnancy ends.

* * * * *

1912(a) Conditions of eligibility.

* * * * *

4. Section 436.114 is amended by adding a new paragraph (e) to read as follows:

§ 436.114 Individuals deemed to be receiving AFDC.

* * * * *

(e) The State must deem to be receiving AFDC individuals described in section 473(a)(1) of the Act—

(1) For whom an adoption assistance agreement is in effect under title IV–E of the Act, whether or not adoption assistance is being provided or an interlocutory or other judicial decree of adoption has been issued; or

(2) For whom foster care maintenance payments are made under title IV–E of the Act.

5. Section 436.120 is amended by revising paragraph (c) to read as follows:

§436.120 Qualified pregnant women and children.

* * * * *

(c) The agency must provide Medicaid to children who meet all of the following criteria:

(1) They are born after September 30, 1983 or, at State option, effective no earlier than April 1, 1986, an earlier designated date;

(2) Effective October 1, 1988, they are under age 6 (or if designated by the State, any age that exceeds age 6 but does not exceed age 8), and effective October 1, 1989 they are under age 7 (or if designated by the State, any age that exceeds age 7 but does not exceed age 8); and

(3) They meet the income and resource requirements of the State's approved AFDC plan.

6. A new §436.122 is added to Subpart B to read as follows:

§ 436.122 Pregnant women eligible for extended coverage.

(a) The Medicaid agency must provide categorically needy Medicaid eligibility to women who, while pregnant, were eligible for, applied for, and received Medicaid as categorically needy on the day that their pregnancy ends for an extended period following termination of pregnancy. This period extends from the last day of pregnancy through the end of the month in which a 60-day period, beginning on the last day of the pregnancy, ends. Eligibility must be provided, regardless of changes in the woman's financial circumstances that may occur within this extended period. These pregnant women are eligible for all pregnancy-related and postpartum services under the plan for this extended period.

(b) The provisions of paragraph (a) of this section apply to medical assistance furnished on or after April 7, 1986.

7. New §§ 436.224 and 436.225 are added to Subpart C to read as follows:

§ 436.224 Individuals under age 21 who are under State adoption assistance agreements.

(a) The agency may provide Medicaid to individuals under the age of 21 (or, at State option, age 20, 19, or 18)—

(1) For whom an adoption agreement (other than an agreement under title IV–E) between the State and adoptive parent(s) is in effect;

(2) Who, the State agency responsible for adoption assistance has determined, cannot be placed with adoptive parents without Medicaid because the child has special needs for medical or rehabilitative care; and

(3) Who meet either of the following:

(i) Were eligible for Medicaid under the State plan before the adoption agreement was entered into; or

(ii) Would have been eligible for Medicaid before the adoption agreement was entered into, if the eligibility standards and methodologies of the foster care program were used without employing the threshold title IV–A eligibility determination.

(b) For adoption assistance agreements entered into before April 7, 1986—

(1) The agency must deem the requirements of paragraph (a)(1) and (2) of this section to be met if the State adoption assistance agency determines that—

(i) At the time of the adoption placement, the child had special needs for medical or rehabilitative care that made the child difficult to place; and

(ii) There is in effect an adoption assistance agreement between the State and the adoptive parent(s).

(2) The agency must deem the requirements of paragraph (a)(3) of this section to be met if the child was found by the State to be eligible for Medicaid before the adoption assistance agreement was entered into.

§ 436.225 Individuals under age 19 who would be eligible for Medicaid if they were in a medical institution.

(a) The agency may provide Medicaid to children 18 years of age or younger who qualify under section 1614(a) of the Act, who would be eligible for Medicaid if they were in a medical institution, and who are receiving, while living at home, medical care that would be provided in a medical institution.

(b) If the agency elects the option provided by paragraph (a) of this section, it must determine, in each case, that the following conditions are met:

(1) The child requires the level of care provided in a hospital, SNF, or ICF.

(2) It is appropriate to provide that level of care outside such an institution.

(3) The estimated Medicaid cost of care outside an institution is no higher than the estimated Medicaid cost of appropriate institutional care.

(c) The agency must specify in its State plan the method by which the agency determines the cost-effectiveness of caring for disabled children at home.

8. In § 436.301, the introductory texts of paragraphs (b) and (b)(1) are republished and a new paragraph (b)(1)(iv) is added to read as follows:

§ 436.301 General rules.

* * * * *

(b) If the agency chooses this option, the following provisions apply:

(1) The agency must provide Medicaid to the following individuals who meet the requirements of paragraph (a) of this section:

* * * * *

(iv) Women who, while pregnant, were eligible for, applied for, and received Medicaid as medically needy on the day that their pregnancy ends. The agency must provide medically needy eligibility to these women for an extended period following termination of pregnancy. This period begins on the last day of the pregnancy and extends through the end of the month in which a 60-day period following termination of pregnancy ends. Eligibililty must be provided, regardless of changes in the women's financial circumstances that may occur within this extended period. These women are eligible for all pregnancy-related and postpartum services under the plan for the extended period.

* * * * *

9. Section 436.403 is amended by revising paragraph (f) to read as follows:

§ 436.403 State residence.

* * * * *

(f) *Individuals receiving title IV–E payments.* For individuals of any age who are receiving Federal payment for foster care and adoption assistance under title IV–E of the Social Security Act, the State of residence is the State where the child lives.

* * * * *

10. Section 436.604 is revised to read as follows:

§ 436.604 Assignment of rights to benefits.

(a) As a condition of eligibility, the agency must require legally able applicants and recipients to assign rights to medical support and other third party payments to the Medicaid agency, to cooperate with the agency in obtaining medical support or payments, and to cooperate with the agency in identifying and providing information to assist the State in pursuing any liable third party. (Part 433, Subpart D, contains specific requirements for these assignments.)

(b) The requirements for assignment of rights must be applied uniformly for all groups covered under the plan.

(c) The requirements of paragraph (a) of this section for assignment of rights to medical support and other payments and cooperation in obtaining medical support and payments are effective for medical assistance furnished on or after October 1, 1984. The requirement for cooperation in identifying and providing information for pursuing liable third parties is effective for medical assistance furnished on or after July 1, 1986.

PART 440—SERVICES: GENERAL PROVISIONS

E. Part 440 is amended as follows:

1. The authority citation for Part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.165 is amended by revising paragraph (c) to read as follows:

§ 440.165 Nurse-midwife services.

* * * * *

(c) "Maternity cycle" means a period limited to—

(1) Pregnancy'

(2) Labor;

(3) Birth; and

(4) The immediate postpartum period which begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

3. Section 440.210 is revised to read as follows:

§ 440.210 Required services for the categorically needy.

A State plan must specify that, as a minimun, categorically needy recipients are provided—

(a) The services as specified in §§ 440.10 through 440.50 and § 440.70;

(b) To the extent nurse-midwives are authorized to practice under State law or regulations, services specified in § 440.165; and

(c) For women who, while pregnant, were eligible as categorically needy for, applied for, and received medical assistance under the plan, all pregnancy-related and postpartum services under the plan for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

4. In § 440.220, the introductory paragraph is republished and a new paragraph (e) is added to read as follows:

§ 440.220 Required services for the medically needy.

A State plan that includes the medically needy must specify that the medically needy are provided, as a minimum, the following services:

* * * * *

(e) For women who, while pregnant, were eligible as medically needy for, applied for, and received medical assistance under the plan, pregnancy-related and postpartum services under the plan for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

5. Section 440.250 is amended by adding a new paragraph (p) to read as follows:

§ 440.250 Limits on comparability of services.

* * * * *

(p) A State may provide a greater amount, duration, or scope of services to pregnant women than it provides under its plan to other individuals who are eligible for Medicaid, under the following conditions:

(1) These services must be pregnancy related or related to any other condition which may complicate pregnancy; and

(2) These services must be provided in equal amount, duration, and scope to all pregnant women covered under the State plan. Pregnancy-related services include prenatal, delivery, and postpartum services. Services for other conditions that might complicate the pregnancy include those for diagnoses, illnesses, or medical conditions which might threaten the carrying of the fetus to full term or the safe delivery of the fetus.

PART 447—PAYMENTS FOR SERVICES

F. Part 447 is amended as follows:

1. The authority citation for Part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. Section 447.53 is amended by revising paragraphs (b) introductory text and (b)(2) to read as follows:

§ 447.53 Applicability; specification; multiple charges.

* * * * *

(b) *Exclusions from cost sharing.* The plan may not provide for imposition of a deductible, coinsurance, copayment, or similar charge upon categorically or medically needy individuals (except as specified in paragraph (b)(6) of this section) for the following:

* * * * *

(2) *Pregnant women.* Services furnished to pregnant women if such services relate to the pregnancy, or to any other medical condition which may complicate the pregnancy are excluded

from cost sharing obligations. These services include routine prenatal care, labor and delivery, routine post-partum care, and complications of pregnancy or delivery likely to affect the pregnancy, such as hypertension, diabetes, urinary tract infection, and services furnished during the postpartum period for conditions or complications related to the pregnancy. The postpartum period is the immediate postpartum period which begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends. States may further exclude from cost sharing all services furnished to pregnant women if they desire.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance Program)

Dated: June 3, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 27, 1988.

Otis R. Bowen,

Secretary.

[Editorial Note: This document was received at the Office of the Federal Register on February 13, 1989]

[FR Doc. 89-3660 Filed 2-22-89; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL COMMUNCIATIONS COMMISSION

47 CFR Parts 2 and 87

[PR Docket No. 89-16; FCC 89-25; RM-6423]

Maritime Service; Frequency Allocation and Aviation Services To Provide Frequencies for Use of Fully Operational Commercial Launch Vehicles

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule would permit commercial launch vehicles that are fully operational to share telemetry frequencies that are currently used for flight test purposes. This action was initiated by a petition for rule making (RM-6423) filed by the Aerospace & Flight Test Coordinating Council (AFTRCC). The effect of the proposed rule is to permit the transmission of diagnostic telemetry data during the flights of fully developed commercial launch vehicles in order to determine whether their components must be modified to improve their performance or avoid a catastrophic failure.

DATES: Comments must be received on or before April 17, 1989, and reply comments must be received on or before May 17, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Fedeal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, PR Docket No. 89-16, adopted January 30, 1989, and released February 15, 1989. The full text of this Commission decision including the proposed rule change is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The full text of this decision including the proposed rule change may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

In response to a petition for rulemaking filed by the Aerospace & Flight Test Radio Coordinating Council (AFTRCC) the FCC proposes to amend the rules in the aviation services to permit fully operational commercial launch vehicles to share telemetry frequencies that are currently used for flight test purposes. Authorization to share the frequencies will permit the transmission of diagnostic telemetry data during the flights of fully operational commercial launch vehicles. Such data will be used to determine whether the components of fully operational launch vehicles must be modified to improve their performance or prevent a catastrophic failure during flight.

Ordering Clauses

This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

The Commission hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. Although these proposed changes allow the aerospace community greater flexibility in the operation of launch vehicles and result in some expenditures for equipment, these additional, optional expenditures should be minimal.

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Authority for issuance of this *Notice* is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments as indicated in the "**DATES**" paragraph of this document. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

A copy of the Notice of Proposed Rule Making will be served on the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Frequency Allocations, Treaties.

47 CFR Part 87

Aviation Services, Aeronautical stations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rules

Parts 2 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, 307, 48. Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. In § 2.106 footnote US276 is revised to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

US276 Except as otherwise provided for herein, use of the band 2310–2390 MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles, or major components thereof. The following six frequencies are shared on a co-equal basis for telemetering and associated telecommand operations of expandable launch vehicles whether or not such operations involve flight testing: 2312.5, 2332.5, 2352.5, 2364.5, 2370.5 and 2382.5 MHz. All other mobile telemetering uses shall be secondary to the above uses.

* * * * *

PART 87—AVIATION SERVICES

1. The authority for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

2. Section 87.5 amended by adding after "Emergency locator transmitter (ELT) test station" a new definition for Expendable Launch Vehicle" to read as follows:

§ 87.5 Definitions.

* * * * *

Expendable Launch Vehicle (ELV). A booster rocket that can be used only once to launch a payload, such as missile or space vehicle.

* * * * *

3. In § 87.303 paragraph (d)(1) is revised to read as follows:

§ 87.303 Frequencies.

* * * * *

(d)(1) Frequencies in the bands 1435–1535 and 2310–2390 MHz are assigned primarily for telemetry and telecommand operations associated with the flight testing of manned or unmanned aircraft and missiles, or their major components. Permissible uses include telemetry and telecommand transmissions associated with the launching and reentry into the earth's atmosphere as well as any incidental orbiting prior to reentry of manned or unmanned objects undergoing flight tests. In the 1435–1535 MHz band, the following frequencies are shared with flight telemetering mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5 and 1525.5 MHz. In the 2310–2390 MHz band, the following frequencies may be assigned on a co-equal basis for telemetry and telecommand operations in fully operational expendable launch vehicles whether or not such operations involve flight testing: 2312.5, 2332.5, 2352.5, 2364.5, 2370.5 and 2382.5 MHz. In the 2310–2390 MHz band, all other telemetry and telecommand uses are secondary. The Maritime Mobile-Satellite Service will be the only service in the 1530–1535 MHz band after January 1, 1990.

* * * * *

[FR Doc. 89–3971 Filed 2–22–89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–52; RM–6032]

Radio Broadcasting Services; Panama City Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of request.

SUMMARY: The Commission denies the request of Winstanley Broadcasting, Inc. to substitute Channel 261C2 for Channel 261A at Panama City Beach, Florida, and to modify its construction permit accordingly (53 8472, March 15, 1988). Channel 261C2 cannot be allotted to Panama City Beach in compliance with the Commission's technical requirements as set forth in § 73.315 of the Rules. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–52, adopted January 19, 1989, and released February 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–3961 Filed 2–22–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Ch. 53 App. A

Air Force Logistics Command Federal Acquisition Regulation Supplement; Surplus Materials Acquisition

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Proposed rule; withdrawal

SUMMARY: On October 30, 1986, the Department of the Air Force published (at 51 FR 39676) a proposed rule to amend Chapter 53 of Title 48 of the Code of Federal Regulations by adding the Air Force Logistics Command (AFLC) Federal Acquisition Regulation as Appendix A, to include a new AFLC Federal Acquisition Regulation Supplement Part AFLC 5391. This proposed rule is removed because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to insure that only regulations which substantially affect the public are included in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AADA, Pentagon, Washington, DC 20330–1000, telephone (202) 694–3431.

SUPPLEMENTARY INFORMATION: Therefore, the Department of the Air Force has withdrawn the proposal to amend Title 48 of the Code of Federal Regulations, Chapter 53, by adding Appendix A to include AFLC Part 5391.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–4218 Filed 2–22–89; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on a Petition To List the Pallid Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Petition Finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioner

presented substantial information that listing the pallid sturgeon *Scaphirhynchus albus*) may be warranted.

DATES: The finding announced in this notice was made in September 1988. Comments and information may be submitted until further notice.

ADDRESSES: Questions or comments concerning this finding should be submitted to the Missouri River Coordinator, Fish and Wildlife Enhancement, P.O. Box 986, Federal Building, Pierre, South Dakota 57501. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at either of the following Service Fish and Wildlife Enhancement Offices: Suite 405, 134 Union Boulevard, Lakewood, Colorado 80228 or Room 308A, 225 South Pierre Street, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Dr. Kent K. Keenlyne, Pierre (605/224–8693), or Dr. James L. Miller, Denver (303/236–7398 or FTS 776–7398), at the above addresses.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended in 1982 (16 US.C. 1531 et seq.), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

The Service has received and made a 90-day finding on the following petition:

A petition from Mr. Peter Carrels was dated May 25, 1988, and received by the Service on June 16, 1988. The petition requested the Service to list the pallid sturgeon (*Scaphirhynchus albus*) as an endangered species. Status review for the pallid sturgeon was initiated by a notice of review published December 30, 1982 (47 FR 58454).

The petition stated that the pallid sturgeon is known only from the Missouri River, and the Mississippi River downstream from the mouth of the Missouri River. The petition and accompanying documentation indicated that the survival of the species is threatened by a declining population, alteration of water temperatures and quality, blockage of fish movement, apparent reproductive failure, hybridization with the shovelnose sturgeon, and past and present habitat destruction or modification. After a review of the petition, accompanying documentation, and references cited therein, the Service found that the petition presented substantial information that the requested action may be warranted. Within 1 year from the date the petition was received, a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act.

Author

This notice was prepared by Dr. Kent K. Keenlyne, Fish and Wildlife Enhancement, P.O. Box 986, Federal Building, Pierre, South Dakota 57501 (605/224–8693).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: February 13, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–4130 Filed 2–22–89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, 675

Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) and notice of scoping.

SUMMARY: NOAA announces its intention to prepare an SEIS to assess the potential effects of controlling access to sablefish, other groundfish, halibut, and crab fishery resources. Such action would be achieved by amending the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMPs), the regulations affecting U.S. fishing for Pacific halibut, and a crab fishery management plan (crab plan). Implementation of such action is expected no sooner than January 1, 1991, for the longline sablefish fishery, April 1, 1991, for the halibut fishery, and January 1, 1992, for all other groundfish and crab fisheries.

In addition, NOAA formally announces a public process for determining the scope of issues to be addressed and for identifying the significant issues related to controlling access to public fishery resources. Scoping meetings will be held on the dates and in the locations specified below. The intended effect of this notice is to alert the interested public of the commencement of a scoping process and to provide for public participation. This action is necessary to comply with Federal environmental documentation requirements.

DATE: Scoping comments are invited from February 28, 1989, through April 30, 1989.

ADDRESS: Send scoping comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668. Information on times and locations of scoping meetings may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, or telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, Alaska Region, NMFS, 907–506–7229.

SUPPLEMENTARY INFORMATION: The commercial harvest of groundfish in the U.S. exclusive economic zone (EEZ) of the Gulf of Alaska and the Bering Sea and Aleutian Islands Area is governed by Federal regulations at 50 CFR 611.92 and 611.93 and 50 CFR Parts 672 and 675, which implement the FMPs.

The FMPs and their accompanying environmental impact statements (EISs) were developed by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Northern Pacific Halibut Act of 1982 (Halibut Act) authorizes the Council to develop allocative regulations, including limiting access to the U.S. halibut fishery, providing such regulations are in

addition to, and not in conflict with, regulations developed by the International Pacific Halibut Commission. The Council will soon submit for Secretarial approval, a crab plan to regulate crab fisheries off Alaska. When implemented, the crab plan could provide for limiting access to crab fisheries through plan amendment.

Under the National Environmental Policy Act of 1969 (NEPA) and NOAA policy, a fishery management regulatory action which significantly affects the human environment, requires preparation of an EIS or SEIS. This notice of intent to prepare an SEIS complies with NEPA implementing regulations at 40 CFR 1508.22. In addition, this notice announces a scoping process pursuant to 40 CFR 1501.7 and 1508.25.

The Problem

Domestic harvest of groundfish in the EEZ off Alaska has grown from 0.1 million mt (7% of the harvest) in 1981 to 2.1 million mt (100% of the harvest) in 1988, supplanting the foreign fleets that formerly dominated the fishery. This increase has been the result of a significant increase in U.S. harvesting capacity. The greatest increase in recent years has occurred primarily in the at-sea processing fleet. This has resulted in a change in domestic processing from 8% of the total catch in 1986 to an estimated 80% in 1989. The increase in numbers of at-sea processing vessels is expected to continue. During the 1981–1988 period, the number of vessels harvesting crab has increased and the number of vessels harvesting halibut has grown to almost 4,000. One result of this increase in number of halibut vessels has been a decrease in fishing season length to 3 or 4 one-day openings per year. There are no known undeveloped fishery resources that are large enough to efficiently employ excess harvesting capacity.

A problem common to these fisheries is that they are managed under open access; profits in the harvesting sector attract increased fishing effort (e.g., vessels, gear, labor). While free entry and exit of firms is common in most sectors of the economy, the fishery sector differs in that the raw material, fish, are a public resource provided at no cost to the harvesters. As a result, the open access fishery tends to use excess inputs (e.g., fuel, vessels, labor) beyond those technically necessary to produce the output of harvested fish, which results in the dissipation of profits (rents). This is an inefficient use of capital, that is, the excess capital would be used more productively in other sectors of the economy. Moreover, investment is directed towards increasing effort (e.g., larger vessels, more gear, better technology), in an attempt by individual fishermen to harvest more fish more quickly than other fishermen. As a result, fishing seasons are shortened, safety risks are increased, bycatch mortality may be increased, fishery managers are pressured to increase harvest quotas, product quality is reduced, and more management controls on when, where, and how fish may be harvested are necessary.

The Council has recognized these problems in the sablefish and the halibut fisheries and anticipates them in fisheries for other groundfish and crabs. At its December 1988 meeting, the Council began an indepth study of two specific controlled-access alternatives for sablefish caught with longline gear: individual fishing quotas and license limitation. At its meeting in January 1989, the Council expanded the scope of its analysis to include the potential of controlling access for all gear types fishing for all groundfish species, halibut, and crab.

The public is hereby notified that the NMFS, in cooperation with the Council, intends to prepare an SEIS on the potential effects of amending the FMPS, the crab plan, and halibut fishing regulations to provide for controlling access to the sablefish, other groundfish, halibut, and crab resources in the EEZ off Alaska. This action is not intended to prejudice a decision by the Council on whether to recommend to the Secretary any change in the FMPs, crab plan, or halibut regulations, but is designed to provide the Council with the best scientific information available on which to base such a decision.

The Proposed and Possible Alternative Actions

The proposed action is to amend the FMPs, the crab plan, and their implementing regulations, and the halibut fishing regulations to provide authority to control access to the public sablefish, other groundfish, halibut, and crab resources off Alaska. Alternatives include:

(1) The status quo in which open access management of these fisheries would continue;

(2) Individual fishing quotas in which access or rights to fish would be issued to individual participants as a share of the total allowable catch;

(3) License limitation in which the number of vessels permitted to fish would be limited.

Scoping Process

All persons affected by or otherwise interested in a decision to amend the FMPs, halibut regulations, and future crab plan to provide for controlled access management of the sablefish, other groundfish, halibut, and crab fisheries off Alaska are invited to participate in determining the scope and the significant issues to be analyzed in the SEIS by submitting written comments to the above address. Scope consists of the range of actions, alternatives, and impacts to be considered in the SEIS. Actions include those which may be closely related, cumulative, or similar. Alternatives include the no action alternative, other reasonable courses of action, and mitigation measures. Impacts my be direct, indirect, and cumulative. The scoping process also will identify and eliminate from detailed study issues which are not significant or which have been covered in prior environmental review. This scoping process will end on April 30, 1989.

The scoping process will involve opportunity for public comment at eight meetings, in addition to the written comments invited by this notice. These meetings are planned as follows:

—Seattle, Washington, at the NMFS Montlake Laboratory Auditorium, on February 28;
—Seattle, Washington, at NMFS Sand Point facilities, on March 1 (Technical Workgroup);
—Dillingham, Alaska, March 11;
—Kodiak, Alaska, March 17;
—Seattle Washington, March 20–21 (Expanded Sablefish Management Committee);
—Sitka, Alaska, March 23;
—Bothel, Alaska, April 6;
—Anchorage, Alaska, April 10–14 (Council meetings).

Precise time and locations of these meetings may be obtained from Council staff at the address and telephone listed above.

Timing of the Analysis and Tentative Decisionmaking Schedule

The Council has adopted a tentative amendment preparation, review and approval schedule for this issue. Under this schedule, there will be three separate groupings: Longline caught sablefish, halibut, and all other groundfish and crab. Discussions and analysis of decision points and options for each alternative will be conducted by the Council until public review periods begin. Public review of controlled access for longline sablefish fishery is to begin in October 1989, final

Council approval would occur at its December 1989 meeting, Secretarial review would begin in December 1989, and implementation of the amendment if approved, would occur in January 1991. Public review of controlled access to the halibut fishery is scheduled to begin in December 1989, final Council approval would occur at its April 1990 meeting, Secretarial review would begin in May 1990, and implementation of the regulations, if approved, would occur April 1991. Controlled access management of all other groundfish and crab fisheries is scheduled to begin public review in August 1990, final Council approval would occur at its December 1990 meeting, Secretarial review would begin in December 1990, and implementation of the amendments, if approved, would occur in January 1992. Under the Magnuson Act, Secretarial review and approval of a proposed amendment is completed in 95 days and includes concurrent public comment periods on the amendment and proposed rule.

Dated: February 17, 1989.

Alan Dean Parsons,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-4151 Filed 2-22-89; 8:45 am]

BILLING CODE 3510-09-M

Notices

Federal Register
Vol. 54, No. 35
Thursday, February 23, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 17, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Federal Crop Insurance Corporation
General Administrative Regulations-Appeals Procedure, 7 CFR Part 400, Subparts J and K
None
Recordkeeping; On occasion
Individuals or households; Farms; 1,476 responses; 1,476 hours; not applicable under 3504(h)
Peter F. Cole, (202) 447–3325

• Agricultural Marketing Service
Reports Forms Under Federal Milk Orders (from milk handlers and milk marketing cooperatives)
Recordkeeping; On occasion; Monthly; Quarterly; Annually; Other—as needed
Businesses or other for-profit; 30,954 responses; 31,448 hours; not applicable under 3504(h)
Richard A. Glandt, (202) 447–4829

• Agricultural Stabilization and Conservation Service
7 CFR Parts 723.62, 724.62, 725.69 and 726.65
MQ–25
On occasion
Farms; 1,000 responses; 500 hours; not applicable under 3504(h)
Sarah Matthews, (202) 475–5012

• Agricultural Marketing Service
Reporting and Recordkeeping Requirements for 7 CFR Part 29
Forms TB–87 & TB–92
Businesses or other for-profit; 10,763 responses; 4,295 hours; not applicable under 3504(h)
Larry Crabtree, (202) 447–3489

• Agricultural Stabilization and Conservation Service
7 CFR Part 1464–ASCS–807
ASCS–807
On occasion
Individuals or households; 25,000 responses; 2,500 hours; not applicable under 3504(h)
Sarah Matthews, (202) 475–5012.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 89–4226 Filed 2–22–89; 8:45 am]
BILLING CODE 3410–01–M

Office of the Secretary

Agriculture Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following advisory committee meeting:

Name: Agriculture Biotechnology Research Advisory Committee.
Dates: March 22–23, 1989.
Time: 9:00 a.m. to approximately 5:00 p.m. on March 22, 9:00 a.m. to approximately 3:00 p.m. on March 23.
Place: Room 104–A, the "Williamsburg Room", USDA Administration Building, 14th and Independence Avenue SW., Washington, DC.
Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person specified below.
Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Assistant Secretary for Science and Education with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research. The major items to be considered at this meeting are the development of guidelines for biotechnology research in agriculture, a field handbook for agricultural researchers using materials and methods of biotechnology, and environmental documentation supporting a specific proposal for pond-contained testing of transgenic fish.
Contact Person: Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, U.S. Department of Agriculture, Office of Agricultural Biotechnology, Room 321–A, Administration Building, 14th and Independence Avenue SW., Washington, DC 20250. Telephone (202) 447–9165.

Done at Washington, DC, this 7th day of February, 1989.

Orville G. Bentley,
Assistant Secretary, Science and Education.
[FR Doc. 89–4125 Filed 2–22–89; 8:45 am]
BILLING CODE 3410–22–M

Forest Service

Horizon Forest Resource Area, Idaho Panhandle National Forests, Kootenai County, ID; Environmental Impact Statement

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The notice is hereby given that the Forest Service is gathering information in order to prepare an EIS (Environmental Impact Statement) for a

proposal to harvest timber and build roads in the Wolf Lodge Creek drainage. The drainage is located approximately 12 air miles east of Coeur d'Alene, Idaho. Part of the proposed timber harvest and road construction are proposed within the Skitwish Ridge roadless area (#01135). These management activities would be administered by the Fernan Ranger District of the Idaho Panhandle National Forests in Kootenai County, Idaho. This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area. The purpose and goals for the proposed action are to (1) help satisfy short-term demands for timber, and maintain a continuous supply of timber in the future; (2) provide additional forage for elk on the big game winter range; (3) maintain and protect existing improvements and resource productive potential; and (4) manage riparian areas to feature riparian-dependent resources while producing other resources outputs.

The Forest Service also serves notice that the agency is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For most effective use, comments should be sent to the agency within 45 days from the date of publication in the **Federal Register.** Open house sessions to receive input from interested individuals or organizations will be held in Spokane, WA, and Coeur d'Alene, ID.

DATE: Public open house sessions will be held at the Fernan Ranger District Office, 2502 E. Sherman Ave. Coeur d'Alene, ID, at 2:00 to 7:00 PM on March 13, 1989, and at the Sheraton-Spokane Hotel, N322 Spokane Falls Ct., Spokane, WA, at 2:00 to 7:00 PM on March 14, 1989. Written comments concerning the scope of the analysis must be received within 45 days from the date of publication in the **Federal Register.**

ADDRESS: Send written comments to District Ranger, Fernan Ranger District, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Pat Sheridan, Planning Staff Officer, Fernan Ranger District, Idaho Panhandle National Forests, 2502 East Sherman Avenue, Coeur d'Alene, ID 83814. Phone: (208) 756–7381.

SUPPLEMENTARY INFORMATION: The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:

Management Area 1: Consists of lands designated for timber production. The management goal is to manage those lands suitable for timber production for the long-term growth and production of commercially valuable wood products as well as provide for soil and water protection, wildlife habitat, dispersed recreation opportunities and visual quality.

Management Area 4: Consists of land designated for timber production within big game winter range. The goal is to manage big game winter range to provide forage to support projected big game habitat needs, through scheduled timber harvest and permanent forage areas;

Management Area 9: Consists of non-forest lands or lands not capable of timber production. Management goals are to maintain and protect existing improvements and resource productive potentials.

Management Area 16: Consists of primary riparian areas. The goal is to manage riparian areas to feature riparian dependent resources (fish, water quality, maintenance of natural channels, and certain vegetation and wildlife communities) while producing other resource outputs.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which the roadless character of the Skitwish Ridge roadless area would be maintained and timber harvest and associated road building would be deferred. Other alternatives will examine timber harvest and road construction in different locations and varied cutting methods and timber management intensities to achieve the purpose of the proposed action.

The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. This will include an analysis of the effects of alternatives on the roadless character of the area affected. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision, however, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process and in the review of the Draft EIS (September, 1989).

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. The Idaho Fish and Game Department is presently leading a Combined Resource Management Planning effort for the privately owned lower portions of the Wolf Lodge Creek drainage. The Department will be invited to participate as a cooperating agency to evaluate potential impacts to the entire watershed.

The draft environmental impact statement (DEIS) is expected to be available for public review in September, 1989. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by March, 1990. The Forest Service will respond to the comments received in the FEIS. The District Ranger who is responsible official for this EIS will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Date: February 15, 1989.

James N. DiMaio,

Acting District Ranger, Fernan Ranger District, Idaho Panhandle National Forests.

[FR Doc. 89-4216 Filed 2-22-89; 8:45 am]

BILLING CODE 3410-11-M

Forest Service Doe Ridge Golf Course Environmental Impact Statement Inyo National Forest; Mono County, CA

Notice to extend comment period for the Draft Doe Ridge Environmental Impact Statement.

The Department of Agriculture, Forest Service has extended the comment period for the Draft Doe Ridge Environmental Impact Statement to March 17, 1989. This extension is in response to numerous requests by both the public and other governmental agencies to extend the comment period so that they can analyze the document in greater detail.

The proposed Doe Ridge Golf Course is located on the Mammoth Ranger District of the Inyo National Forest in the Pacific Southwest Region (R-5).

Dated: February 16, 1989.

Ray Porter,

Resource Staff Officer, Mammoth Ranger District, Inyo National Forest.

[FR Doc. 89-4217 Filed 2-22-89; 8:45 am]

BILLING CODE 3410-11-M

National Forest System Law Enforcement Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Forest System Law Enforcement Advisory Council will hold its first meeting in Tuscon, Arizona, March 21 through March 23, 1989, at the Viscount Hotel, 4855 E. Broadway Street, from 8 a.m. to 12 p.m. The purpose of the meeting is to brief members of current law enforcement policy of the Forest Service so that they can better advise the Secretary of Agriculture on the operation and management of law enforcement on National Forest System lands. The meeting is open to public attendance; however, participation is limited to Forest Service personnel and Council members. The public is invited to submit written suggestions or comments on any issues or concerns that the Council should consider at this or future meetings.

DATES: The meeting will be held from March 21 through March 23, 1989. The deadline for submitting written comments is March 14, 1989.

ADDRESSES: Viscount Hotel, 8455 E. Broadway Street, Tuscon, Arizona, 85711, (602-745-6500). Send written comments to: Deputy Chief for Administration (5300), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Susan Sea, Fiscal and Public Safety Staff, (703) 235-3527.

SUPPLEMENTARY INFORMATION: Following enactment of the National Forest Drug Control Act of 1986 (16 U.S.C. 559b-f), the Secretary of Agriculture determined that it was in the public interest to establish a National Forest System Law Enforcement Advisory Council, notice of which was published December 18, 1987, at 52 FR 48135. The purpose of the Council is to assist the Secretary of Agriculture in protecting National Forest System users and their property, as well as in protecting forest resources, Federal employees, and Federal property.

Since the March meeting is the Council's first formal meeting, its purpose is to brief members of the Council on the history of the Forest Service, the traditional role of law enforcement in the Forest Service, and current issues and management concerns about law enforcement operation on National Forest System lands and to attend to any other organizational matters. As part of the Council's orientation and briefing, field trips are scheduled for two afternoons: to the Federal Law Enforcement Training Center, Marana, Arizona, and to a nearby Ranger District of the Coronado National Forest. The formal meetings and the field trips are open to the public. However, transportation cannot be provided to the field trips sites for members of the public.

In addition to attending the meeting, members of the public are invited to submit written comments in advance of the meeting containing suggestions or concerns about law enforcement issues or topics that they feel the Council should address or consider at this or future meetings. The comments are due by March 14 at the address listed earlier in this notice.

William L. Rice,

Deputy Chief.

Date: February 16, 1989.

[FR Doc. 89-4124 Filed 2-22-89; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 8:30 p.m. on March 8, 1989, at the LeBaron Hotel, 1350 North First Street, San Jose, California 95112. The purpose of the meeting is to discuss the committee's project on higher education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Deborah Hesse or Philip Montez, Director of the Regional Division (213) 894-3437, (TDD 213/894/0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 13, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-4117 Filed 2-22-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Caribbean Basin Business Promotion Council; Open Meetings

March 10-11, 1989.

AGENCIES: International Trade Administration and the Office of the U.S. Trade Representative.

SUMMARY: The Caribbean Basin Business Promotion Council (Council) consists of 30 private sector members and nine U.S. Government representatives. The Council was established to advise the Secretary of Commerce on matters pertinent to implementation of the Caribbean Basin Initiative (CBI). The Council's advice will also be forwarded to the interagency CBI Task Force.

In addition to the full Council meeting, there will be open meetings of the Council's 936, Education and Finance Subcommittees on the following day. The full Council will then reconvene to

entertain reports from the Subcommittees.

Time and Place: The Caribbean Basin Business Promotion Council will meet on March 10 in Room 4830 of the U.S. Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, DC from 9:00 a.m. to approximately 5:00 p.m.

The Council's Subcommittee meetings will be held on Saturday, March 11 from 9:30 a.m. to 11:00 a.m. at the U.S. Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, DC. The full Council will reconvene on March 11 at 11:00 a.m. in Room 4830 to receive the reports of the subcommittees and to complete any unfinished business. The subcommittee March 11 meeting schedules are as follows: 936 Subcommittee, Room 4830; Financing Subcommittee, Room 1414; Education Subcommittee, Room 1411.

Please note that identification will be required to obtain entry into the building.

Proposed Agenda—Caribbean Basin Business Promotion Council

March 10

Council member country visit reports for St. Lucia and Guatemala.

Investment climate reviews for the Dominican Republic and Guyana.

CBI Center Director report.

Update on CBI enhancement legislation.

General Discussion period for Council.

March 11

936 Subcommittee—Discussion of methods to promote the Caribbean Basin Development (936) program and progress review.

Financing Subcommittee—Examination of financial impediments to economic progress and discussion of financial mechanisms that may facilitate business development in the Caribbean Basin.

Education Subcommittee—Exploration of means to create and expand education opportunities for Caribbean Basin students.

Public Participation

All meetings will be open to public attendance and a period will be set aside for oral comments or questions from the public. Any member of the public may submit written comments concerning Subcommittee or Council affairs at any time before or after the meetings. Limited seating is available to the public.

FOR FURTHER INFORMATION CONTACT: Paul D. Bucher, Caribbean Basin Information Center, U.S. Department of Commerce, Main Commerce Building, Room 3203, Washington, DC 20230. Telephone (202) 377–0703. Copies of the minutes of the Council's meetings will also be available at the above office 30 days after the meetings.

Date: February 12, 1989.

Gordon Studebaker,

Director, CBI Center.

[FR Doc. 89–4152 Filed 2–22–89; 8:45 am]

BILLING CODE 3510–FP–M

National Institute of Standards and Technology

[Docket No. 90127–9027]

Announcing Request for Applications Beta Test Sites for NIST POSIX Conformance Test Suite (NIST–PCTS)

AGENCY: National Institute of Standards and Technology (NIST), (formerly the National Bureau of Standards (NBS)), Commerce.

ACTION: Notice.

SUMMARY: The NIST is seeking organizational applicants for Beta Test Sites for the NIST POSIX Conformance Test Suite (NIST–PCTS) which tests conformance to the planned revision of Federal Information Processing Standard (FIPS) 151, POSIX: Portable Operating System Interface for Computer Environments.

DATE: To become a Beta Test Site for the NIST–PCTS–1, organizations should apply in writing by March 27, 1889.

ADDRESS: Applications should be submitted to: POSIX Beta Test, Attn: Roger J. Martin, National Institute of Standards and Technology, Building 225, Room B–266, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Roger J. Martin, (301) 975–3295.

SUPPLEMENTARY INFORMATION: The purpose of the Beta testing is to ensure that the NIST–PCTS–1 has been fully debugged and ready for release into the public domain at which time it will become available for sale through the National Technical Information Service (NTIS). Beta testing is scheduled to begin on, or about, March 15, 1989. Beta Test Sites will execute the NIST–PCTS–1 in their environments and will be required to provide timely reports to NIST on the results. There will be a charge of $100 to cover materials and shipping expenses. Interested parties should submit the name, telephone number and address of a contact to NIST at the address shown above.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

Raymond G. Kammer,

Acting Director.

Date February 16, 1989.

[FR Doc. 89–4127 Filed 2–22–89; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will meet on March 1–2, 1989, at the Howard Johnson's Hotel, Route 1, Danvers, MA. On March 1 the public meeting will begin at 10 a.m., and will adjourn at approximately 5 p.m. On March 2 the meeting will begin at 9 a.m., and will adjourn when the agenda items are completed.

The Council will discuss reports from the Groundfish, Scallop, Enforcement, and ad hoc User Fee Oversight Committees. There also will be discussion on a motion made at the January 1989 meeting concerning effort limitations and presentations on the New Zealand individual transferable quota (ITQ) system, and quota enforcement in the Bay of Fundy. Special reports will be made on the recent square mesh workshop, the administrator's user fee proposal, striped bass in the exclusive economic zone, bluefish, Amendment #8 to the Surf Clam and Ocean Quahog Fishery Management Plan (FMP), and a proposed amendment to the Billfish FMP. Additionally, there will be a report on the Regional Fishery Management Councils' Chairman's meeting, and on the Uniform Standards.

SUPPLEMENTARY INFORMATION: Contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231–0422.

Dated: February 16, 1989.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–4189 Filed 2–22–89; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.209]

Native Hawaiian Family-Based Education Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: To make direct grants to Native Hawaiian Organizations (including Native Hawaiian Education Organizations) to develop and operate a minimum of eleven family-based education centers throughout the Hawaiian Islands.

Deadline for Transmittal of Applications: April 14, 1989.

Deadline for Intergovernmental Review: June 13, 1989.

Applications Available: February 27, 1989.

Available Funds: $1,778,400.

Estimated Average Size of Awards: $197,600.

Estimated Number of Awards: 9.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, and 85.

Weighting for Selection Criteria: The Education Department General Administrative Regulations at 34 CFR 75.210(c) authorize the Secretary to distribute an additional 15 points among the selection criteria in 34 CFR 75.210 to bring the total possible points to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Meeting the Purpose of the Authorizing Statute (§ 75.210(b)(1)). Five (5) additional points will be added for a possible total of 35 points for this criterion.

Plan of Operation: (§ 75.210(b)(3)). Five (5) additional points will be added for a possible total of 20 points for this criterion.

Budget and Cost Effectiveness: (§ 75.210(b)(5)). Five (5) additional points will be added for a possible total of 10 points for this criterion.

Description of Program: Section 4004 of Pub. L. 100–297 authorizes the Secretary to make direct grants to Native Hawaiian Organizations (including Native Hawaiian Educational Organizations) to develop and operate family-based education centers that will include:

1. Parent-infant programs (prenatal through age 3);

2. Preschool programs for four- and five-year olds;

3. Continued research and development; and

4. A long term follow-up and assessment program. No more than 7 percent of a grant made under this program may be used for administrative purposes.

Definitions: For purposes of this program the following definitions contained in Section 4009 of Pub. L. 100–297 are applicable:

1. The term "Native Hawaiian" means any individual who is—

a. A citizen of the United States,

b. A resident of the State of Hawaii, and

c. A descendant of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii, as evidenced by—

(i) Genealogical record,

(ii) Kupuna (elders) or Kama'aina (long term community residents) verification, or

(iii) Birth records of the State of Hawaii.

2. The term "Secretary" means the Secretary of Education.

3. The term "Native Hawaiian Educational Organization" means a private nonprofit organization that—

a. Serves the interests of Native Hawaiians,

b. Has a demonstrated expertise in research and program development.

4. The term "Native Hawaiian Organization" means a private nonprofit organization that—

a. Serves the interests of Native Hawaiians, and

b. Is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or portion of programs) for the benefit of Native Hawaiians.

For Applications or Further Information Contact: Ramon Ruiz, Acting Division Director, Division of Discretionary Grants, Office of Elementary and Secondary Education, 400 Maryland Avenue SW., Washington, DC 20202–6436. Telephone: (202) 732–4059.

Program Authority: 20 U.S.C. 4904.

Dated: February 16, 1989.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89–4209 Filed 2–22–89; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Stafford Loan Program, SLS Program, PLUS Program, and Consolidation Loan Program

AGENCY: Department of Education:

ACTION: Notice of special allowance for quarter ending December 31, 1988.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Supplemental Loans for Students (SLS) Program, the PLUS Program or the Consolidation Loan Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087–1).

Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087–1(b)(2)(B), for the quarter ending December 31, 1988, the special allowance will be paid at the following rates:

Applicable interest rate percent	Annual special allowance rate percent	Special allowance rate percent for quarter ending December 31, 1988
I. Stafford, Plus or Consolidation loans made prior to October 1, 1981:		
7	4.50	1.125
9	2.50	0.625
II. Stafford, SLS or PLUS loans made on or after October 1, 1981, but prior to November 16, 1986, for periods of enrollment beginning prior to November 16, 1986; Consolidation loans made on or after October 1, 1981, but prior to November 16, 1986:		
7	4.49	1.1225
8	3.49	0.8725
9	2.49	0.6225
12	0.00	0.00
14	0.00	0.00
III. Stafford loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986; SLS or PLUS loans made at a fixed rate of interest either on or after November 16, 1986, or for periods of enrollment beginning on or after November 16, 1986; Consolidation loan made on or after November 16, 1986:		
7	4.24	1.06
8	3.24	0.81
9	2.24	0.56
10	1.24	0.31
11	0.24	0.06
12	0.00	0.00
13	0.00	0.00
14	0.00	0.00

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate, by making the following four calculations:

(a) Step 1.

Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies (7.99 percent for the quarter ending December 31, 1988);

(b) Step 2

Subtract from that average the applicable interest rate of loans for which a holder is requesting payment;

(c) Step 3

(1) Add 3.5 percent to the remainder, and, in the case of loans made before October 1, 1981, round the sum upward to the nearest one-eighth of one percent; or

(2) Add 3.25 percent in the case of (i) Stafford loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, (ii) SLS or PLUS loans made at a fixed rate of interest either on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, or (iii) consolidation loans made on or after November 16, 1986; and

(d) Step 4

Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Program Analyst, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 732-4242.

Dated: January 23, 1989.

Kenneth D. Whithead,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance No. 843.032, Guaranteed Student Loan Program and PLUS Program)

[FR Doc. 89-4208 Filed 2-22-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to the Vattell Corp.

AGENCY: Department of Energy.

ACTION: Unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FC01-89CE15426 to Vattell Corporation to assist in the development of an invention entitled "Eddy Current Transducing System."

Scope: This grant will aid in providing funding to Vattell Corporation as follows: (1) Allow testing of the new sensing concept in proposed applications at the lowest initial cost; (2) design the product as a plug in card for the IBM PC or compatible computer.

The purpose of this project is to develop the production prototype of a plug-in card for the IBM PC or compatible computers to be used by a host computer for turbomachinery monitoring and control, in order to reduce damage to turbomachinery and to operate the machinery at its maximum efficiency.

Eligibility: Based on receipt of an unsolicited proposal, eligibility of this award is being limited to Vattell Corporation, a corporation whose sole employee is L.W. Langley. Vattell was founded in 1985 by the inventor to identify and commercialize technology originating from Virginia Technical Institute (VTI). It has been determined that this project has high technical merits which represent considerable potential for both energy savings and improvements in safety.

The term of this grant shall be for two (2) years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Shari Sterling, MA-453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Contract Operations Division "B," Office of Procurement Operations.

[FR Doc. 89-4213 Filed 2-22-89; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

New Energy-Efficient Homes Programs Record of Decision

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Record of decision.

SUMMARY: The BPA, a Federal power marketing agency for the Pacific Northwest, has made a decision on the approach to take in conserving energy as part of its new energy-efficient homes programs. This decision was based on a Final Environmental Impact Statement (EIS) which analyzed various construction techniques for saving energy and mitigating decreased indoor air quality (IAQ). BPA has determined that four different construction techniques or "pathways" are acceptable methods of building homes under its program to provide adequate ventilation and substantial energy savings.

In reaching its decision, BPA analyzed a total of 11 different pathways comparing each of them to a Baseline (1983 building practice). BPA has decided to offer Pathways 3, 5, 8, and 10, or an equivalent technology, from among those contained in the Preferred Action Alternative in the Final EIS. The selection of these four different construction pathways was based on consideration of five major decision factors: environmental, economic, technical, public concerns, and legal. The factors were carefully balanced for each a decision that provides the best alternative for BPA's programs. The advantages of the chosen pathways include, health effects that were close enough to those in the Baseline to be within its range of uncertainty, substantial energy savings, and maximum program flexibility at reasonable cost.

The decision reflects a modified Preferred Action Alternative from that in the EIS. Pathway 6 has been dropped from consideration, at this time, due to the economics associated with implementation.

The Environmentally Preferred Alternative, Pathway 8, results in the greatest overall decrease in the lifetime cancer rate relative to the Baseline, and provides reasonable energy savings.

A mitigation package forms an integral part of the new energy-efficient homes programs. The four pathways selected have the following environmental mitigation requirements: exhaust fans for kitchens and bathrooms; designated air supplies for combustion appliances; information on indoor air quality; Housing and Urban Development (HUD) product standards for formaldehyde emissions from structural board materials; and the offer of radon monitoring and radon source control, known as the radon package.

FOR FURTHER INFORMATION CONTACT: For information and for additional copies of the Record of Decision or the Final Environmental Impact Statement, contact Anthony Morrell, Assistant to the Administrator for Environment—AJ, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; (503) 230-5136. Or call BPA's Public Involvement office. Telephone numbers, voice/TTY, for the Public Involvement officer are: 503-230-3478 in Portland; toll-free 800-452-8429 for Oregon outside of Portland; 800-547-6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–3490

Mr. Robert Rasmussen, Eugene Acting District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–787–6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington, 98801, 509–662–4377

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue North, Suite 400, Seattle, Washington, 98109, 206–442–4130

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington, 99362, 509–522–6226

Mr. Robert N. Laffel, Idaho Falls District Manager, 1527 Holliday Park Drive, Idaho Falls, Idaho, 83401, 208–523–2706

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, Federal Building, 550 W. Fort Street, Boise, Idaho, 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The BPA pursuant to sections 6(a)(1)(A)–(D) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839d(a)(1)(A)–(D), promotes the Construction of energy-efficient homes. The new energy-efficient homes programs include such features as marketing and incentive homes, financial assistance to jurisdictions that incorporate Model Conservation Standards (MCS) into building codes, and implementation of a surcharge policy. The MCS are energy-efficient performance standards, which were developed by the Northwest Power Planning Council, for electrically heated buildings.

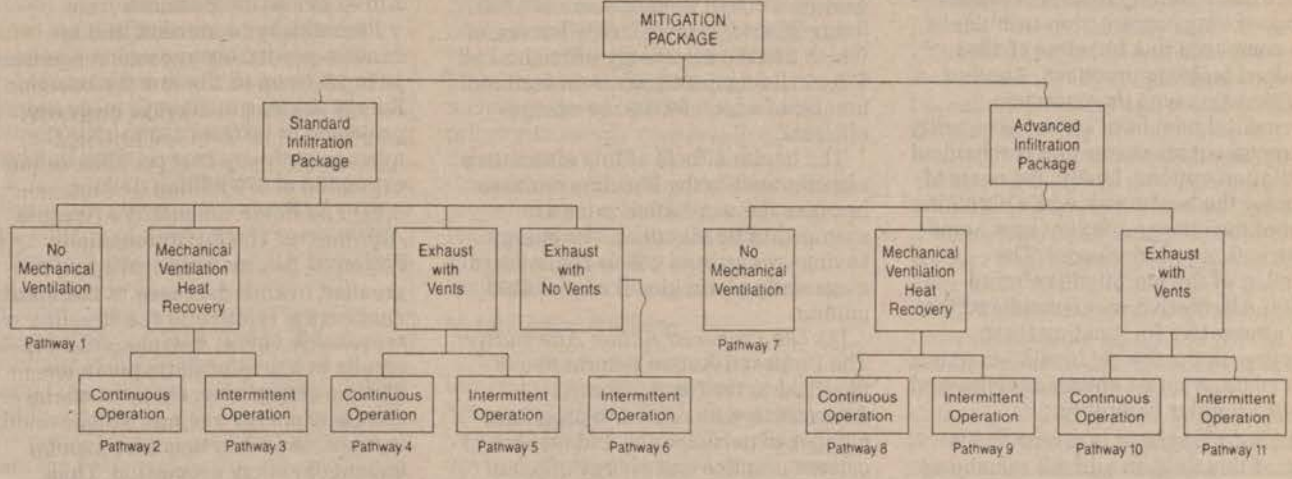
The primary environmental issue for new energy-efficient homes is whether tighter construction increases indoor air pollution, which may in turn adversely affect the health of the occupants. To date, BPA has prevented or reduced this possible effect in energy-efficient homes built under its programs by either (1) using mechanical ventilation (MV) systems to maintain ventilation rates at levels generally found in homes built when the MCS were first adopted (1983 building practice), or (2) requiring monitoring and mitigation of formaldehyde and radon levels above 0.1 parts per million (ppm) or 5 picoCuries per liter (pCi/1), respectively.

BPA published its Final New Energy-Efficient Homes Programs Environmental Impact Statement (EIS) (DOE/EIS–0127F) in August 1988. The Final EIS took into consideration the comments received on the Draft EIS which was published in March 1987. BPA prepared this EIS to explore whether other approaches would control indoor air quality (IAQ) and still maintain cost-effective energy savings. Its purpose was to provide builders and consumers with more flexibility in how they control IAQ in energy-efficient homes. Different building techniques and mitigation measures were analyzed for their ability to maintain IAQ comparable to that found in 1983 building practices, or to even improve it.

The Final EIS was distributed to the public in early September and it was filed with the Environmental Protection Agency (EPA) on September 30, 1988. EPA's notice of availability of the EIS was published in the **Federal Register** (53 FR 39516), Friday October 7, 1988. Subsequent to these actions, BPA has decided on the approach to take for its new energy-efficient homes programs and is issuing this Record of Decision to inform the public of that decision.

In BPA's effort to try to increase builder and consumer flexibility in its new energy-efficient homes programs, 4 program alternatives developed from 11 different construction "pathways" were examined in the final EIS. The pathways combined practical, commercially available methods for controlling IAQ with common construction techniques. The pathways and the basis upon which they were developed are illustrated in the figure below.

The Proposed Action Construction Pathways



II. The Decision

BPA has decided to select Pathways 3, 5, 8, and 10 from the proposed action, or an equivalent to these pathways, to implement its new energy-efficient homes programs. These pathways are identified in the Preferred Action Alternative described in the Final EIS. Pathway 6, which is also part of the Preferred Action Alternative in the Final EIS has been dropped from consideration, at this time, due to the economics associated with implementation.

This selection recognizes the need not only to maintain IAQ, but also to enhance it to ensure that new energy-efficient homes have fewer health risks than those potentially occurring in current building practice homes. To accomplish this at an acceptable cost without sacrificing flexibility, BPA is using a strategy that includes indoor air quality enhancement features in all of the pathways, a menu of technical ventilation options, and information to program participants regarding pollutants which they can recognize and control themselves if they choose. Subsequently, this reduces BPA's intrusion into decisions normally left to individuals. A mitigation package forms an integral part of the new energy-efficient homes programs. All practicable means to avoid or minimize environmental harm from the selected alternative have been adopted.

The selection of the modified Preferred Action Alternative used five key decision factors: environmental, economic, technical, public concern, and legal impacts. In reaching a decision, the thrust was to develop an appropriate risk management strategy. In balancing the factors, the uncertain incremental risk of ill health from lower air infiltration resulting from new home energy-saving construction techniques was compared to a baseline of 1983 standard building practices. Another consideration was the uncertain incremental benefit of indoor air quality enhancement measures and mechanical ventilation options. Lastly, the costs of reducing the health risk while obtaining most of the energy-efficient new home construction was reviewed. The selection of the modified Preferred Action Alternative was considered the best alternative for meeting these factors with the fewest health impacts, least costs, greatest energy savings, and greatest builder flexibility.

The Administrator is reserving his right, at this time, to add the remaining seven pathways to the options available in BPA's programs.

The Environmentally Preferred Action Alternative is to proceed only with Pathway 8. It results in the greatest relative decrease in health effects with satisfactory energy savings. This alternative is included in the pathways selected in the decision. By itself, it does not permit enough flexibility for implementing BPA's new energy-efficient residential construction programs, and results in a higher overall regional cost when compared to the Baseline.

III. The Alternatives

Four alternatives were considered for use in BPA's new energy-efficient homes programs. These alternatives were based on the 11 pathways. The four alternatives were analyzed and compared to a Baseline in reaching the decision.

The Baseline was derived from BPA's 1986 medium housing forecast, and assumed no energy-efficient new homes programs were underway. In the Baseline it was estimated that, from 1986 through 2006, the region would experience 335 radon-induced lifetime cancers per 100,000 persons and 10 formaldehyde-induced lifetime cancers per 100,000 persons.

A description of each of the four alternatives follows:

(1) *The No Additional Action Alternative:* The No Additional Action Alternative represents the programs BPA has been pursuing since 1985 to promote new energy-efficient home construction. The analysis is based on continuing a regional marketing-based program from 1985 through 2006, but providing financial incentives only through 1988.

It is estimated that by the year 2006 about 1.3 million people will be residing in 436,600 new single-family, electrically heated homes, of which 270,800 will be energy-efficient homes; some 568,800 living in 354,000 multifamily homes, of which 228,160 are energy-efficient; and 570,400 living in 247,300 manufactured homes, of which 59,700 are energy-efficient.

The health effects of this alternative as compared to the Baseline are zero because the ventilation rates are assumed to be identical. The energy savings range from 155 to 171 average megawatts at a regional cost of $233 million.

(2) *The Proposed Action Alternative:* The Proposed Action Alternative is identical to the No Additional Alternative with regard to programs, number of participants, and number of current practice and energy-efficient homes built. However, unlike the other alternatives, this one includes the broader menu of 11 building pathways, including mitigation measures, from which builders and consumers may choose to maintain IAQ.

The health effects of this alternative as compared to the Baseline, vary from −56 to +266 for single-family and −98 to +293 for multifamily radon-induced lifetime cancers per 100,000 persons, and from −1 to +5 for single-family and from −3 to +15 for formaldehyde-induced lifetime cancers per 100,000 persons. Energy savings in average megawatts vary from 54 to 135 for single-family and from 10 to 37 in multifamily homes. Costs range from 256 to 576 (1986 million $) for single-family homes.

(3) *The Preferred Action Alternative:* The Preferred Action Alternative consists of a combination of 5 of the 11 construction pathways. The Administrator is currently making a decision to implement four of the pathways: 3, 5, 8, and 10. Pathway 6 was dropped from consideration, at this time, due to the economics associated with implementation. These pathways were chosen because the health effects were close enough to those in the Baseline to be within the range of uncertainty and they had substantial energy savings with maximum flexibility for builders at a reasonable cost.

For this alternative, the total number of energy-efficient site-built homes projected through 2006 is 270,808, with total electric additions projected at 436,630. The affected population is 1,305,409; some 568,800 living in 354,000 multifamily homes, of which 228,160 are energy-efficient; and 570,410 living in 247,290 manufactured homes, of which 59,690 are energy-efficient. Radon-induced lifetime cancers per 100,000 persons range from 260 for multifamily to 419 for manufactured homes, or from 2 to 42 below the Baseline.

Formaldehyde-induced lifetime cancers per 100,000 persons range from 10 to 12, or up to 2 below the Baseline. Energy savings in average megawatts is projected to be from 158 to 176. The average pathway cost per 1986 dollars is estimated at 379 million dollars.

(4) *The Environmentally Preferred Alternative:* The Environmentally Preferred Alternative results in the greatest overall decrease in the lifetime cancer rate relative to the Baseline with reasonable energy savings. Pathway 2 results in a greater decrease in the lifetime cancer rate, but does not have adequate energy savings which would increase the adverse environmental impact of energy generation. Thus, Pathway 8 was chosen as the Environmentally Preferred Alternative.

The total number of energy-efficient site-built homes projected through 2006 is 270,808, with total electric additions projected at 436,630. The affected population is 1,305,409.

The estimated number of lifetime cancers is lower than estimates for the Baseline, with radon ranging from 295 to 328 for single-family, 218 to 268 for multifamily, and from 401 to 408 for manufactured homes. Formaldehyde ranges from 9 to 12 induced lifetime cancers per 100,000 persons and is lower than the Baseline in all homes. This is consistent with the Pathway's higher ventilation rates. For this alternative, estimated regional energy savings (average megawatts) range from 114 to 130 for single-family, 27 to 36 for multifamily, and 40 to 41 for manufactured homes, all in average megawatts, depending on whether the upper or lower bound of the ventilation estimate is used. The regional cost would be $619 million.

IV. The Decision Factors

The selection of the modified Preferred Action Alternative was based on the evaluation of the five major decision factors (environmental, economic, technical, public concerns, and legal) as follows:

1. *Environmental:* With regard to environmental considerations, the Preferred Action Alternative is compared with 1983 building practices (Baseline). It recognizes the increment of risk to human health from lower infiltration rates of new home energy-saving construction techniques. However, it also recognizes the benefits of the mechanical ventilation options and indoor air quality enhancement measures of each pathway. The Preferred Action Alternative is also sensitive to the protection and enhancement of the quality of the human environment. It takes into account the effectiveness of alternative means for reducing risks of ill-health, and the possible need of acquiring electric generating plants, in lieu of conservation, which would consume land and water resources.

2. *Economic:* The Preferred Action Alternative considers the energy savings (the amount of electric power acquired under each alternative). It acknowledges the price of each alternative which includes operation and maintenance cost as well as initial cost to the residents individually, and to the Region, as a whole. Employment, or the ability to provide jobs, is also weighed. The combination of pathways chosen from the Preferred Action Alternative in this decision constitutes a maximization of the benefits from the above considerations in light of the other four major decision factors.

3. *Technical:* The Preferred Action Alternative provides flexibility in the variety of choices for building homes. The uncertainty of ventilation rate estimates of 1983 building practices based on new measurement technologies, and the lack of conclusive information on the health effects of the indoor air pollution problem are acknowledged. It recognizes home variability (indoor air pollution varies across dwellings because they differ in construction practices, structure, air infiltration rates, volume, pollutant sources and emission rates of these sources); and, behavioral variability (differences in residents' ways of life or habits as they contribute to differences in indoor air pollution). It is also sensitive to administrative practicality or the ease and fairness of administering a regional program in cooperation with Pacific Northwest utilities, States, and other entities.

4. *Public Concerns:* The Preferred Action Alternative is sensitive to the public's concerns regarding consistency in the support of mechanical ventilation. The views of those responding to the Draft EIS were considered and the changes in the Final EIS reflect their concerns. Allowances were made for the voluntary nature of participation in programs by residents and the effect of their actions on indoor air pollution concentrations in their dwellings. This includes the ability of occupants to reduce indoor air pollution by avoiding known pollutant sources or exercising other options based on information received and the need to allow for consumer choice. It also reflects a minimization of conflict over differences in conservation programs with Federal, State, and local agencies.

5. *Legal:* The Preferred Action Alternative responds to BPA's statutory mission to fulfill obligations under the Pacific Northwest Electric Power Planning and Conservation Act including the obligation to give first priority to energy conservation. It is consistent with the Northwest Conservation and Electric Power Plan prepared by the Northwest Power Planning Council, and it recognizes BPA's limited ability to regulate individual behavior in private homes.

V. Mitigation Package

A mitigation package forms an integral part of the new energy-efficient homes programs. The four pathways being selected have the following environmental mitigation requirements: exhaust fans for kitchen and bathrooms; designated outside air supplies for combustion appliances; information on indoor air quality; HUD product standards for formaldehyde emissions from structural building materials; the offer of radon monitoring and radon source control, known as the radon package.

The radon package allows a builder one of two basic approaches. Either the builder constructs the house to include certain foundation treatments (i.e., a ventilated crawlspace or a layer of gravel under the concrete slab), or the builder foregoes those measures and is responsible for requiring radon monitoring in the house after construction. If the monitoring shows that radon levels exceed 5 picoCuries per liter (pCi/1), then the builder is required to retrofit the house with the appropriate mitigation measure and activate the measure. These actions can reduce radon concentrations by 70%, on average.

Issued in Portland, Oregon, on February 7, 1989.

Jack Robertson,

Deputy Administrator.

[FR Doc. 89-4212 Filed 2-22-89; 8:45 am]

BILLING CODE 6450-01-M

Proposal To Readopt the 1987 Transmission Rates, Public Hearings, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of and Opportunities for Review and Comment. *BPA File No:* TR-89. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation TR-89.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) states that BPA must establish and periodically review and revise BPA's rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS). BPA has reviewed its current transmission rate schedules which became effective on October 1, 1987. Based on this review, BPA has determined that current transmission rates will continue to produce sufficient revenue for BPA to meet its statutory requirements for Fiscal Years (FY) 1990 and 1991. Therefore, BPA is proposing to

extend its 1987 rates by readopting its 1987 Rate Schedules as its 1989 transmission rate schedules to be effective through FY 1990 and 1991.

Through a separate public involvement process, BPA has completed a through review of program cost levels for the budgets for FY 1990 and 1991. The Administrator will not reexamine program level decisions in the rate case.

Beginning in October 1988, BPA conducted a series of workships on subjects relevant to BPA's ratesetting. The purpose of the workship was to identify, simplify, and reduce the number of issues that might become part of 1989 rate case. All parties to the 1987 rate case were informed of and invited to the workshops. The workshops were well attended and provided opportunities for informal public comment on issues outside the formal hearing process.

Opportunities will be available for interested persons to review BPA's proposal to readopt the 1987 rates based on the existing supporting studies, to participate in the rate hearing, and to submit written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this notice.

Responsible Official: Ms. Shirley R. Melton, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's rates.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so in accordance with requirements stated in this notice. The petitions to intervene must be received by March 10, 1989, and should be addressed as follows: Honorable Seymour F. Wenner, Hearing Officer, c/o John Ciminello-APR, Hearing Clerk, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. In addition, a copy of the intervention must be served on BPA's Office of General Counsel–APR, P.O. Box 3621, Portland, Oregon 97208. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances.

BPA will prefile the studies and testimony of its witnesses on March 8, 1989. Copies will be available in the Public Information Center and will be mailed to all parties to the 1987 rate proceeding.

A prehearing conference will be held before the Hearing Officer at 9 a.m. on March 16, 1989, in Room 106 of the BPA Headquarters Building, 905 NE. 11th Avenue, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs as are determined necessary and for expediting any necessary cross examination. A notice of the dates and times of any hearings will be mailed to all parties of record. Objections to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference.

The following proposed schedule is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

March 8, 1989—Initial studies available at BPA's Public Information Center, 905 NE. 11th Avenue, 1st Floor, Portland, Oregon.

March 10, 1989—Deadline for interventions to be filed with Hearing Clerk at above address.

March 13, 1989—Technical Session to discuss studies and testimony.

March 16, 1989—Prehearing Conference to set schedule and act on petitions to intervene.

March 31, 1989—Participants written comments due.

No Later Than July 29, 1989—Final Record of Decision.

Written comments by participants may be submitted until the close of all hearings.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager–ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms Teresa Cunningham Byrnes, Public Involvement office, at the address listed above, 503–230–3478. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from.

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Robert W. Rasmussen, Acting Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109–1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Forth Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On December 23, 1988, in order to satisfy contractual provisions between BPA and its customers, BPA published in the **Federal Register** a notice of "Intent to Revise Transmission Rates to Become Effective October 1, 1989," 53 FR 51891. Since then, BPA has continued to study the adequacy of its current rates and has concluded that current 1987 rates will be adequate for the 1989 rate period.

In order to assess its current rates, BPA first determined the amount of revenue required to meet its financial obligations in FY 1990 and 1991. BPA has determined that the revenues BPA would expect to collect from projected loads under its current rates will adequately cover these revenue requirements. Therefore, BPA proposes to readopt and refile the current 1987 transmission rates as the proposed 1989 transmission rates. BPA files its rates

with the Federal Energy Regulatory Commission (FERC).

The proposed transmission rates were prepared in accordance with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C. 832 e, f (1982); the Flood Control Act of 1944, 16 U.S.C. 825s (1982); the Regional Preference Act, 16 U.S.C. 837 (1982); the Federal Columbia River Transmission System Act, 16 U.S.C. 838 g, h (1982); and the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839 (1982).

The rate schedules contained in this publication were established, in accordance with the Northwest Power Act, which was signed into law on December 5, 1980. The proposed rate schedules reflect many requirements contained principally in the Northwest Power Act's rate directives (section 7), as well as the conditions related to classes of customers and services contained in the Northwest Power Act's power sales directives (section 5).

BPA proposes that its transmission rate schedules and the General Transmission Rate Schedule Provisions (GTRSPs) associated with these schedules become effective upon interim approval or final confirmation and approval by FERC. BPA will request FERC approval effective October 1, 1989. Section I.A. of the GTRSPs specifies the proposed effective period for each rate.

The 1989 transmission rate schedules, and the GTRSPs associated with these rate schedules, are identical to BPA's 1987 rate schedules. They supersede BPA's 1987 rate schedules (which became effective October 1, 1987) to the extent stated in the Availability section of each 1989 rate schedule. Two transmission rates are referenced in existing contracts. These are the TGT–1 and UFT–83 rate schedules. Those rates are effective through June 30, 1990. 39 FERC ¶ 60,078 (1978). BPA will request extension of TFT–1 and UFT–83 through September 30, 1991.

Many transmission agreements were negotiated prior to the Transmission System Act and reflect conditions and policies prevalent at the time of negotiation. Provisions that differ between agreements include the types of facilities available, type of service, frequency of rate adjustments, determination of losses, and calculation of billing determinants. Some agreements, for example, specify that transmission rates may be changed annually, while other agreements limit rate adjustments to once every 3 years.

Applicable legislation requires transmission system costs to be equitably allocated between Federal and non-Federal power utilizing the system. In cases where BPA is required by contractual provisions to use a specific rate design method, such methods are used in this rate proposal.

In developing the proposed transmission rates, BPA considered many factors, including revenue requirements, ease of administration, revenue stability, rate continuity, ease of comprehension, economic efficiency, and BPA's statutory obligations. The studies that have been prepared to support the proposed transmission rates will be available for examination on March 8, 1989, at BPA's Public Information Center, BPA Headquarters Building, first floor, 905 NE. 11th Avenue, Portland, Oregon. The studies will be mailed to all parties to BPA's 1987 rate case. The studies also may be requested by phone or in writing from BPA's Public Involvement office and will be available at the Prehearing Conference. The studies are:

1. Revenue Requirement Study and Documentation.
2. Revenue Forecast Study/Risk Assessment Study and Documentation.

Persons seeking to become parties should not wait until the prehearing conference to obtain copies of the studies. Rather, potential parties should obtain the studies as soon as they are available so that they are conversant with them at the time of the prehearing conference. Parties appearing at the prehearing conference shall be required to state whether they will oppose BPA's rate proposal, provided that BPA will have first offered satisfactory assurances that no substantive or procedural precedent shall arise by virtue of the substance, manner, or form of BPA's or any other party's action in connection with the rate proposal, and that the extended rates suffer the same entire or partial legality as the 1987 transmission rates. The March 13 technical session is provided in order to assist parties in their evaluation of BPA's proposal.

To request either of the studies by telephone, call BPA's document request line: 800–841–5867 for Oregon; 800–624–9495 for Washington, Idaho, Montana, California, Wyoming, Utah, and Nevada. Other callers should use 503–230–3478. Please request the study by its above title. Also state whether you require the accompanying technical documentation; otherwise the study alone will be provided. (For example, ask for the "Revenue Requirement Study and Technical Documentation.")

II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that rates be established according to certain procedures. These procedures inlcude, among other things, issuance of a Federal Register notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986), which implements, and in most instances expands, the statutory requirements. The proceedings for BPA's proposal to readopt transmission rates will be combined with the proceedings for BPA's proposal for wholesale power rates.

Among BPA's major customer groups, none have expressed opposition to the proposal to readopt rates. Thus, the Administrator firmly expects that the parties will not avail themselves of the opportunity for hearing afforded by BPA's procedures. In that event, and upon due and appropriate motion, the Hearing Officer will truncate the proceedings so that participants may be quickly heard and parties extended the opportunity to comment on the Administrator's Draft Record of Decision. In the event a truncated procedure is adopted, the Administrator directs the Hearing Officer to incorporate by reference the Official Record compiled in BPA's 1987 Wholesale Power and Transmission Rate proceeding into the Official Record of this proceeding.

The hearing will be conducted according to the rule for general rate proceedings, § 1010.9 of BPA's "Procedures Governing Bonneville Power Administration Rate Hearings." BPA's procedures provide for publication of a notice of the proposed rates, a prehearing conference, the opportunity for hearing, receipt of written comments, preparation of decisional documents, a decision, and the transmittal of the decision with supporting documentation to the Federal Energy Regulatory Commission.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the procedures as any person who may

express his views, but who does not successfully petition to intervene as a party. Participants' written comments will be made part of the official record of the case and considered by the Administrator. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties." Participants are entitled to participate in the prehearing conference, cross examine parties' witnesses, seek discovery, or serve or be served with documents, and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are submitted before the close of the hearings. Written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement office.

The second category of interest is that of a "party" as defined in §§ 1010.2 and 1010.4 of the "Procedures Governing Bonneville Power Administration Rate Hearings." 51 FR 7611 (March 5, 1986). Parties may participate in any aspect of the hearing process.

Persons wishing to become a formal "party" to BPA's rate proceeding must notify BPA in writing of their request. These petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Any opposition to a petition to intervene must be filed and served at least 24 hours before the March 16 prehearing conference. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of the petition. Intervention petitions will be available for inspection in BPA's Public Information Center, first floor, 905 NE. 11th Avenue, Portland, Oregon. Interventions are subject to § 1010.4 of BPA's "Procedures Governing Bonneville Power Administration Rate Hearings."

The record will include, among other things, the transcripts of any hearings, any written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop the final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates will be first expressed in the Administrator's Draft Record of Decision (ROD). Parties will have an opportunity to comment on the draft as provided on BPA's hearing procedures. Absent comment, the Draft ROD will become Final. If comment is made, a Final ROD will be issued. The Administrator will serve copies of the Administrators Record of Decision on all parties and will file the final proposed rates together with the record with the Federal Energy Regulatory Commission for confirmation and approval.

III. Major Studies

A. *Revenue Requirement Study.* The Bonneville Project Act, the Flood Control Act of 1944, the Federal Columbia River Transmission System Act, and the Northwest Power Act require BPA to design rates that are projected to return revenues sufficient to recover the cost of acquiring, conserving, and transmitting the electric power that BPA markets, including the amortization of the Federal investment in the FCRPS over a reasonable period, and to recover BPA's other costs and expenses. The Revenue Requirement Study includes a determination that current rates will produce enough revenue to recover all BPA costs and expenses, including BPA's repayment obligations to the United States Treasury.

The Transmission System Act and the Northwest Power Act require that transmission rates be based on an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. In compliance with a Federal Energy Regulatory Commission (FERC) order dated January 27, 1984, 26 FERC ¶ 61,096, the Revenue Requirement Study incorporates the results of separate repayment studies for the generation and transmission components of the FCRPS. The repayment studies for generation and transmission demonstrate the adequacy of the projected revenues to recover all of the Federal investment in the FCRPS over the allowable repayment period. The adequacy of projected revenues to recover cost evaluation period revenue requirements and to meet repayment period recovery of the Federal investment are tested and demonstrated separately for the generation and transmission functions.

The Revenue Requirement Study for the 1989 initial rate proposal is based on revenue and cost estimates for FY 1990 and 1991. BPA's Revenue Requirement Study reflects actual amortization and interest payments paid through September 30, 1988. In addition, it reflects all FCRPS obligations incurred pursuant to the Northwest Power Act, including exchange costs.

B. *Revenue Forecast Study.* The Revenue Forecast Study is divided into two parts. The first part, the Revenue Forecast, documents BPA's loads, resources, contracts, and revenues that are the basis for BPA's base case forecast. The second part, the Risk Assessment, documents the various risk factors and probabilities associated with these risk factors that cause BPA's revenues to vary. The Revenue Forecast Study also documents several models that are used to prepare the Revenue Forecast and Risk Assessment, such as the load forecasting models, the Marketing Linear Programming Model, the Federal Secondary Energy Analysis, the Nonfirm Revenue Analysis Program, the Revenue Estimating Program, and the Risk Analysis Program.

The Revenue Forecast separately identifies revenues by rate schedule including Priority Firm, Variable Industrial, Industrial Firm, Surplus Firm, Nonfirm, Firm Capacity, and various transmission service charges (e.g., Intertie North, Intertie South, Formula Power, Integration of Resources, Incidental Network Transmission, TGT, UFT, and O&M). It also accounts for other revenue sources such as WNP–1 exchange, the WNP–3 settlement, Coordination Agreement (charges) revenues, USBR pumping power, and several other miscellaneous categories of revenues. All of these revenues are documented for FY 1989–1991 on a monthly basis in the Revenue Forecast.

BPA's revenues are subject to significant variation due to several variables. To measure the impact of these variables on BPA revenues, BPA performs a Risk Assessment Analysis. The Risk Assessment Analysis examines five variables that have a significant effect on BPA's revenues and includes high, medium, and low forecasts for these variables. The five

variables are the economy (which includes aluminum prices and employment); marketing environment (which includes natural gas prices and contractual agreements); streamflow conditions (precipitation); thermal resource performance; and settlement of WNP–1 exchange contracts. These events are assumed to be independent of each other. A range of revenue outcomes is developed for each year (FY 1989–1991) from 243 possible scenarios. Probabilities are developed for each scenario based on the assumption that these events are independent. Each revenue scenario is compared to the expenses for FY 1989 and 1990 to determine whether or not the proposed CRAC would trigger in the following year. The Risk Assessment Study explains this process in greater detail and determines the likelihood that BPA revenues will exceed expenses and be adequate to meet payments to the Treasury.

IV. Transmission Rates

Individual transmission rate schedules are discussed below.

A. *Formula Power Transmission (FPT).* The FPT–89 rate schedule is available for the firm wheeling of power. The form of this rate includes a distance or mileage component for transmission lines and various transformation and terminal charges. The FPT rate form is designed to reflect a wheeling formula which has been prescribed historically by contract provisions.

B. *Integration of Resources (IR).* The IR–89 rate is a flexible transmission service designed to reflect BPA's postage-stamp pricing policy. The IR service does not recognize specific contract paths, but rather provides access to all FCRTS facilities contained in the definitions of Main Grid and Secondary System.

A short-distance discount formula is included in the IR–89 rate. Utilities have a choice of either the FPT rate schedule or the IR–89 rate schedule as the only rate to apply to all of their firm wheeling needs over Main Grid and Secondary System facilities of the FCRTS, except as otherwise agreed by BPA. Utilities may choose the rate schedule that yields the lower total charge for transmission service.

C. *Incidental Energy Transmission (ET), Intertie (IN, IE, IS) Transmission, and Market Transmission (MT).* Rate schedules on the Northern and Southern Interties apply to all wheeled power on these segments, whatever the characteristics of the power. The IE rate schedule applies only to nonfirm energy wheeled on the Eastern Intertie. The ET rate will be limited to intraregional FCRTS facilities excluding the interties.

The IS–89 rate consists of two parts: (1) a mills per kilowatthour rate applicable to nonfirm use or hourly reservation of intertie capacity and (2) a power kW average cost-based rate for firm use, assured delivery.

BPA is continuing its Market Transmission (MT–89) rate. This rate schedule was developed for use among Western Systems Power Pool (WSPP) participants and has a flexible service charge with a ceiling, initially of 33 mills/kWh, and a floor of 1 mill per kilowatthour.

V. Transmission Rate Schedules and General Transmission Rate Schedule Provisions

Transmissionf Rate Schedules

Schedule FPT–89.1 Formula Power Transmission

Section I. Availability

This schedule is identical to and supersedes schedule FPT–87.1 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once a year. It is available for firm transmission of electric power and energy using the Main Grid and/or Secondary System of the FCRTS. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm availability of service is required. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to BPA's General Transmission Rate Schedule Provisions.

Section II. Rate

A. *Full-Year Service.* The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the Main Grid Charge, the Secondary System Charge, and Intertie Charge, as applicable and as specified in the Agreement.

1. *Main Grid Charge.* The Main Grid Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Main Grid Distance Factor: The amount computed by multiplying the Main Grid Distance by $0.0250 per mile;

b. Main Grid Interconnection Terminal Factor: $0.20;

c. Main Grid Terminal Factor: $0.25;

d. Main Grid Miscellaneous Facilities Factor; $1.04;

2. *Secondary System Charge.* The Secondary System Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Secondary System Distance Factor: The amount determined by multiplying the Secondary System Distance by $0.1255 per mile;

b. Secondary System Transformation Factor: $1.95;

c. Secondary System Intermediate Terminal Factor: $0.72;

d. Secondary System Interconnection Terminal Factor: $0.36;

3. *Intertie Charge.* For use of the Southern Intertie facilities: $5.21.

B. *Partial-Year Service.* The monthly charge per kilowatt of billing demand shall be as specified in Section II.A for all months of the year except for agreements whose term is 5 years or less and which specify service for fewer than 12 months per year, the monthly charge shall be:

1. During months for which service is specified, the monthly charge defined in Section 11.A, and

2. During other months, the monthly charge defined in Section II.A multiplied by 0.2.

Section III. Billing Factors

Unless otherwise stated in the Agreement, the billing demand shall be the largest of:

A. The Transmission Demand;

B. The highest hourly Scheduled Demand for the month; or

C. The Ratchet Demand.

Schedule FPT–89.3—Formula Power Transmission

Section I. Availability

This schedule is identical to and supersedes schedule FPT–87.3 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once every 3 years. It is available for firm transmission of electric power and energy using the Main Grid and/or Secondary System of the FCRTS. This schedule is for full-year and partial-year service and for either continuous or intermittent service when firm availability of service is required. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to BPA's General Rate Schedule Provisions.

Section II. Rate

A. *Full-Year Service.* The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the Main Grid Charge, the Secondary System Charge, and Intertie Charge, as applicable and as specified in the Agreement.

1. *Main Grid Charge.* The Main Grid Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Main Grid Distance Factor: The amount computed by multiplying the Main Grid Distance by $0.0250 per mile;

b. Main Grid Interconnection Terminal Factor: $0.20;

c. Main Grid Terminal Factor: $0.25;

d. Main Grid Miscellaneous Facilities Factor: $1.04;

2. *Secondary System Charge.* The Secondary System Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Secondary System Distance Factor: The amount determined by multiplying the Secondary System Distance by $0.1255 per mile;

b. Secondary System Transformation Factor: $1.95;

c. Secondary System Intermediate Terminal Factor: $0.72;

d. Secondary System Interconnection Terminal Factor: $0.36;

3. *Intertie Charge.* For use of the Southern Intertie facilities: $5.21.

B. *Partial-Year Service.* The monthly charge per kilowatt of billing demand shall be as specified in Section II.A for all months of the year except for agreements whose term is 5 years or less and which specify service for fewer than 12 months per year, the charge shall be:

1. During months for which service is specified, the monthly charge defined in Section II.A, and

2. During other months, the monthly charge defined in Section II.A multiplied by 0.2.

Section III. Billing Factors

Unless otherwise stated in the Agreement, the billing demand shall be the largest of:

A. The Transmission Demand;

B. The highest hourly Scheduled Demand for the month; or

C. The Ratchet Demand.

Schedule IR–89—Integration of Resources

Section I. Availability

This schedule is identical to and supersedes IR–87 and is available for firm transmission service for electric power and energy using the Main Grid and/or Secondary System of the FCRTS. The definitions of Main Grid and Secondary Systems are the same as for the FPT–89.1 and FPT–89.3 rate schedules and are contained in the General Transmission Rate Schedule Provisions. For facilities at voltages lower than the Secondary System, a different rate schedule may be specified. Service under this schedule is subject to BPA's General Transmission Rate Schedule Provisions.

Section II. Rate

The monthly charge shall be the sum of A and B where:

A. *The Demand Charge shall be:*

1. $0.2600 per kilowatt of billing demand; or

2. For Points of Integration (POI) specified in the Agreement as being short distance POI's, for which Main Grid and Secondary System facilities are used for a distance of less than 75 circuit miles, the following formula applies:

[0.2 + (0.8/75 × transmission distance)] ($0.2600 per kilowatt of billing demand)

where:

the billing demand for a short distance POI is the demand level specified in the Agreement for such POI, and the transmission distance is the circuit miles betweeen the POI for a generating resource of the customer and a designated Point of Delivery (POD) serving load of the customer. Short distance POI's are determined by BPA after considering factors in addition to transmission distance.

B. The Energy Charge shall be:

0.85 mills/kWh of billing energy.

Section III. Billing Factors

To the extent that the Agreement provides for the customer to be billed for transmission in excess of the Transmission Demand or Total Transmission Demand, as defined in the Agreement, at the nonfirm transmission rate (currently ET–89), such transmission service shall not contribute to either the Billing Demand or the Billing Energy for the IR rate provided that the customer requests such treatment and BPA approves in accordance with the prescribed provisions in the Agreement.

A. *Billing Demand.* The billing demand shall be the largest of:

1. The Transmission Demand, except under General Transmission Agreements where a Total Transmission Demand is defined;

2. The highest hourly Scheduled Demand for the month; or

3. The Ratchet Demand.

B. *Billing Energy.* The billing energy shall be the monthly sum of scheduled kilowatthours.

Schedule IS–89—Southern Intertie Transmission

Section I. Availability

This schedule is identical to and supersedes IS–87 and is available for all transmission on the Southern Intertie. Service under this schedule is subject to BPA's General Transmission Rate Schedule Provisions.

Section II. Rate

A. *Nonfirm Rate.* The charge for nonfirm transmission of non-BPA power shall be 1.4 mills/kWh of billing energy. This charge applies for both north-to-south and south-to-north transactions.

B. *Firm Power Transmission Rate.* The charge for firm transmission service granted access by BPA shall be $0.360 per kW per month of billing demand and 0.69 mills/kWh of billing energy. Firm transmission will only be made available to customers under this rate schedule who have executed a contract with BPA specifying use of the Firm Power Transmission rate for either north-to-south or south-to-north transactions.

Section III. Billing Factors

A. For services under Section II.A, the billing energy shall be the monthly sum of the scheduled kilowatthours, plus the monthly sum of kilowatthours allocated but not scheduled. The amount of allocated but not scheduled energy that is subject to billing may be reduced pro rata by BPA due to forced Intertie outages, and other uncontrollable forces that may reduce Intertie capacity. The amount of allocated but not scheduled energy that is subject to billing also may be reduced upon mutual agreement between BPA and the customer.

B. For services under Section II.B, the billing demand shall be the Transmission Demand as defined in the Agreement. The billing energy shall be the monthly sum of scheduled kilowatthours, unless otherwise specified in the Agreement.

Schedule IN–89—Northern Intertie Transmission

Section I. Availability

This schedule is identical to and supersedes IN–87 and is available for all transmission on the Northern Intertie. Service under this schedule is subject to BPA's General Transmission Rate Schedule Provisions.

Section II. Rate

The charge for transmission of non-BPA power on the Northern Intertie shall be 1.05 mills/kWh.

Section III. Billing Factors

Billing Energy. The billing energy shall be the monthly sum of the scheduled kilowatthours.

Schedule IE–89– Eastern Intertie Transmission

Section I. Availability.

This schedule is identical to and supersedes IE–87 and is available for all nonfirm transmission on the Eastern Intertie. Service under this schedule is subject to BPA's General Transmission Rate Schedule Provisions.

Section II. Rate

The charge for transmission of nonfirm energy on the Eastern Intertie shall be 2.08 mills/kWh.

Section III. Billing Factors

Billing Energy. The billing energy shall be the monthly sum of the scheduled kilowatthours.

Schedule ET–89—Energy Transmission

Section I. Availability

This schedule is identical to and supersedes ET–87, unless otherwise specified in the Agreement, with respect to delivery using FCRTS facilities other than the Southern Intertie, Eastern Intertie, or the Northern Intertie, and is available for nonfirm transmission between points within the Pacific Northwest. BPA may interrupt service which is provided under this rate schedule. Service under this schedule is subject to BPA's General Transmission Rate Schedule Provisions.

Section II. Rate

The charge for such nonfirm transmission of non-Federal electric energy shall be 1.61 mills/kWh.

Section III. Billing Factors

Billing Energy. The billing energy shall be the monthly sum of scheduled kilowatthours.

Schedule MT–89–Market Transmission

Section I. Availability

This schedule is identical to and supersedes MT–87 and is available for Transmission Service for tranactions using FCRTS facilities pursuant to the Western Systems Power Pool (WSPP) Agreement. Service under this schedule is subject to BPA's General Transmission Rate Schedule Provisions.

Section II. Rate

The charge shall be determined in advance by BPA. The charge shall not exceed 33 percent of the difference between the highest Decremental Cost of generation of the WSPP and the lowest Decremental Cost of generation of the WSSP as determined by the WSPP Operating Committee during the year prior to the effective date of the WSPP Agreement. The Operating Committee may determine that a subsequent redetermination is necessary based upon the immediately preceding year's experience. However, the transmission charge shall not be less than 1 mill per kilowatthour.

Section III. Billing Factors

The billing factors shall be specified in advance by BPA, as to representing the Transmission Service use or reservation.

Schedule UFT–83—Use-of-Facilities Transmission

Section I. Availability

This schedule supersedes UFT–1, and UFT–2, unless otherwise provided in the Agreement, and is available for firm transmission over specified FCRTS facilities.

Section II. Rate

The monthly charge per kilowatt of Transmission Demand specified in the Agreement shall be one-twelfth of the annual cost of capacity of the specified facilities divided by the sum of Transmission Demands (in kilowatts) using such facilities. Such annual cost shall be determined in accordance with Section III.

Section III. Determination of Transmission Rate

A. From time to time, but not more often than once in each Contract Year, BPA shall determine the following data for the facilities which have been constructed or otherwise acquired by BPA, and which are used to transmit electric power and energy:

1. The annual cost of the specified FCRTS facilities, as determined from the capital cost of such facilities and annual cost ratios developed from the FCRTS financial statement, including interest and amortization, operation and maintenance, administrative and general, and general plant costs.

2. The yearly noncoincident peak demands of all users of such facilities or other reasonable measurement of the facilities' peak use.

B. The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the annual cost of the FCRTS facilities used divided by the sum of Transmission Demands. The annual cost per kilowatt of Transmission Demand for a facility contructed or otherwise acquired by BPA shall be determined in accordance with the following formula:

A/D

where:

A = The annual cost of such facility as determined in accordance with A.1. above.

D = The sum of the yearly noncoincident demands on the facility as determined in accordance with A.2. above.

The annual cost per kilowatt of facilities listed in the Agreement which are owned by another entity, and used by BPA for making deliveries to the transferee, shall be determined from the costs specified in the Agreement between BPA and such other entity.

Section IV. Determination of Billing Demand

Unless otherwise stated in the Agreement, the factor to be used in determining the kilowatts of billing demand shall be the largest of:

A. The Transmission Demand in kilowatts specified in the Agreement;

B. The highest hourly Measured or Scheduled Demand for the month, the Measured Demand being adjusted for power factor; or

C. The Ratchet Demand.

Schedule TGT–1—Townsend-Garrison Transmission

Section I. Availability

This schedule shall apply to all agreements which provide for the firm transmission of electric power and energy over transmission facilities of BPA's section the Montana [Eastern] Intertie.

Section II. Rate

The monthly charge shall be one-twelfth of the sum of the annual charges listed below, as applicable and as specified in the agreements for firm transmission. The Townsend-Garrison 500-kV lines and associated terminal, line compensation, and communication facilities are a separately identified portion of the Federal Transmission System. Annual revenues plus credits for Government use should equal annual costs of the facilities, but in any given year there may be either a surplus or a deficit. Such surpluses or deficits for any year shall be accounted for in the computation of annual costs of succeeding years. Revenue requirements for firm transmission use will be decreased by any revenues received from nonfirm use and credits for all Government use. The general methodology for determining the firm rate is to divide the revenue requirement by the total firm capacity requirements. Therefore, the higher the total capacity requirements, the lower will be the unit rate.

If the Government provides firm transmission service in its section of the Montana [Eastern] Intertie in exchange

for firm transmission service in a customer's section of the Montana Intertie, the payment by the Government for such transmission services provided by such customer will be made in the form of a credit in the calculation of the Intertie Charge for such customer. During an estimated 1- to 3-year period following the commercial operation of the third generating unit at the Colstrip Thermal Generating Plant at Colstrip, Montana, the capability of the Federal Transmission System west of Garrison Substation may be different from the long-term situation. It may not be possible to complete the extension of the 500-kV portion of the Federal Transmission System to Garrison by such commercial operation date. In such event, the 500/230 kV transformer will be an essential extension of the Townsend-Garrison Intertie facilities, and the annual costs of such transformer will be included in the calculation of the Intertie Charge.

However, starting 1 month after extension to Garrison of the 500-kV portion of the Federal Transmission System, the annual costs of such transformer will no longer be included in the calculation of the Intertie Charge.

A. Nonfirm Transmission Charge:

This charge will be filed as a separate Rate Schedule and revenues received thereunder will reduce the amount of revenue to be collected under the Intertie Charge below.

B. Intertie Charge for Firm Transmission Service:

$$\text{Intertie Charge} = [(TAC/12 - NFR) \times (CR - EC/TCR]$$

Section III. Definitions

A. TAC=Total Annual Costs of facilities associated with the Townsend-Garrison 500-kV Transmission line including terminals, and prior to extension of the 500-kV portion of the Federal Transmission System to Garrison, the 500/230 kV transformer at Garrison. Such annual costs are the total of (1) interest and amortization of associated Federal investment and the appropriate allocation of general plant costs; (2) operation and maintenance costs; (3) allowance for Bonneville's general administrative costs which are appropriately allocable to such facilities, and (4) payments made pursuant to section 7(m) of Public Law 96-501 with respect to these facilities. Total Annual Costs shall be adjusted to reflect reductions to unpaid total costs as a result of any amounts received, under agreements for firm transmission service over the Montana Intertie, by the Government on account of any reduction in Transmission Demand, termination or partial termination of any such agreement or otherwise to compensate BPA for the unamortized investment, annual cost, removal, salvage, or other cost related to such facilities.

B. NFR=Nonfirm Revenues, which are equal to (1) the product of the Nonfirm Transmission Charge described in II(A) above, and the total nonfirm energy transmitted over the Townsend-Garrison line segment under such charge for such month; plus (2) the product of the Non-Firm Transmission Charge and the total nonfirm energy transmitted in either direction by the Government over the Townsend-Garrison line segment for such month.

C. CR=Capacity Requirement of a customer on the Townsend-Garrison 500-kV transmission facilities as specified in its firm transmission agreement.

D. TCR=Total Capacity Requirement on the Townsend-Garrison 500-kV transmission facilities as calculated by adding (1) the sum of all Capacity Requirements (CR) specified in transmission agreements described in section I; and (2) the Government's firm capacity requirement. The Government's firm capacity requirement shall be no less than the total of the amounts, if any, specified in firm transmission agreements for use of the Montana Intertie.

E. EC=Exchange Credit for each customer which is the product of (1) the ratio of investment in the Townsend-Broadview 500-kV transmission line to the investment in the Townsend-Garrison 500-kV transmission line; and (2) the capacity which the Government obtains in the Townsend-Broadview 500-kV transmission line through exchange with such customer. If no exchange is in effect with a customer, the value of EC for such customer shall be zero.

General Transmission Rate Schedule Provisions

Section I. Adoption of Revised Transmission Rate Schedules and General Transmission Rate Schedule Provisions

A. *Approval of Rates.* These rate schedules and General Transmission Rate Schedule Provisions (GTRSP) shall become effective upon approval by the Federal Energy Regulatory Commission. BPA will request FERC approval effective October 1, 1989. BPA is requesting that all proposed Transmission Rate Schedules be effective for a period of 2 years, from October 1, 1989 through September 30, 1991, with the exception of TGT-1 and UFT-83 which would be effective from July 1, 1990, through September 30, 1991.

B. *General Provisions.* These 1989 Transmission Rate Schedules and associated GTRSP are identical to and supersede BPA's 1987 Tarnsmission Rate Schedules and GTRSP (which became effective October 1, 1987) but do not supersede prior rate schedules required by agreement to remain in force.

Transmission service provided shall be subject to the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to the Agreement or as in any of the above Acts.

C. *Interpretation.* If a provision in the executed Agreement is in conflict with a provision contained herein, the former shall prevail.

Section II. Billing Factor Definitions and Billing Adjustments

A. *Billing Factors*—1. *Scheduled Demand.* The largest of hourly amounts wheeled which are scheduled by the customer during the time period specified in the rate schedules.

2. *Metered Demand.* The Metered Demand in kilowatts shall be largest of the 60-minute clock-hour integrated demands measured by meters installed at each POD during each time period specified in the applicable rate schedule. Such measurements shall be made as specified in the Agreement. BPA, in determining the Metered Demand, will exclude any abnormal readings due to or resulting from (a) emergencies or breakdowns on, or maintenance of, the FCRTS; or (b) emergencies on the customer's facilities, provided that such facilities have been adequately maintained and prudently operated as determined by BPA. If more than one class of power is delivered to any POD, the portion of the metered quantities assigned to any class of power shall be as agreed to by the parties. The amount so assigned shall constitute the Metered Demand for such class of power.

3. *Transmission Demand.* The demand as defined in the Agreement.

4. *Total Transmission Demand.* The sum of the transmission demands as defined in the Agreement.

5. *Ratchet Demand.* The maximum demand established during the previous 11 billing months. Exception: If a Transmission Demand or Total

Transmission Demand has been decreased pursuant to the terms of the Agreement during the previous 11 billing months, such decrease will be reflected in determining the Ratchet Demand.

B. *Billing Adjustments.—Average Power Factor.* The adjustment for average power factor, when specified in a transmission rate schedule or in the Agreement, shall be made in accordance with the average power factor section of the General Wheeling Provisions.

To maintain acceptable operating conditions on the Federal system, BPA may restrict deliveries of power at any time that the average leading power factor or average lagging power factor for all classes of power delivered to such point or to such system is below 85 percent.

Section III. Other Definitions

Definitions of the terms below shall be applied to these provisions and the Transmission Rate Schedules, unless otherwise defined in the Agreement.

A. *Agreement.* An agreement between BPA and a customer to which these rate schedules and provisions may be applied.

B. *Decremental Cost.* As used in the MT rate schedule, Decremental Cost is as defined in the WSPP Agreement.

C. *Eastern Intertie.* The segment of the FCRTS for which the transmission facilities consist of the Townsend-Garrison double-circuit 500 kV transmission line segment including related terminals at Garrison.

D. *Electric Power.* Electric peaking capacity (kW) and/or electric energy (kWh).

E. *Federal Columbia River Transmission System (FCRTS).* The transmission facilities of the Federal Columbia River Power System (FCRPS), which include all transmission facilities owned by the Government and operated by BPA, and other facilities over which BPA has obtained transmission rights.

F. *Firm Transmission Service.* Transmission service which BPA provides for any non-BPA power except for transmission service which is scheduled as nonfirm. If the firm service is provided pursuant to the Agreement, the terms of the Agreement may further define the service.

G. *Integrated Network.* The segment of the FCRTS for which the transmission facilities provide the bulk of transmission of electric power within the Pacific Northwest, excluding facilities not segmented to the network in the Wholesale Power Rate Development Study used in BPA's rate development.

H. *Main Grid.* As used in the FPT and IR rate schedules, that portion of the Integrated Network with facilities rated 230 kV and higher.

I. *Main Grid Distance.* As used in the FPT rate schedules, the distance in airline miles on the Main Grid between the POI and the POD, multiplied by 1.15.

J. *Main Grid Interconnection Terminal.* As used in the FPT rate schedules, Main Grid terminal facilities that interconnect the FCRTS with non-BPA facilities.

K. *Main Grid Miscellaneous Facilities.* As used in the FPT rate schedules, switching, transformation, and other facilities of the Main Grid not included in other components.

L. *Main Grid Terminal.* As used in the FPT rate schedules, the Main Grid terminal facilities located at the sending and/or receiving end of a line exclusive of the Interconnection terminals.

M. *Nonfirm Transmission Service.* Interruptible transmission service which BPA may provide for non-BPA power.

N. *Northern Intertie.* The segment of the FCRTS for which the transmission facilities consist of two 500 kV lines between Custer Substation and the United States-Canadian border, one 500 kV line between Custer and Monroe Substations, and two 230 kV lines from Boundary substation to the United States-Canadian border, and the associated substation facilities.

O. *Point of Integration (POI).* Connection points between the FCRTS and non-BPA facilities where non-Federal power is made available to BPA for wheeling.

P. *Point of Delivery (POD).* Connection points between the FCRTS and non-BPA facilities where non-Federal power is delivered to a customer by BPA.

Q. *Secondary System.* As used in the FPT and IR rate schedules, that portion of the Integrated Network facilities with operating voltage of 115 kV or 69 kV.

R. *Secondary System Distance.* As used in the FPT rate schedules, the number of circuit miles of Secondary System transmission lines between the secondary POI and the Main Grid and the POD or the lower voltage FCRTS facilities which may be used on a use-of-facility basis.

S. *Secondary System Interconnection Terminal.* As used in the FPT rate schedules, the terminal facilities on the Secondary System that interconnect the FCRTS with non-BPA facilities.

T. *Secondary System Intermediate Terminal.* As used in the FPT rate schedules, the first and final terminal facilities in the Secondary System transmission path exclusive of the Secondary System Interconnection terminals.

U. *Secondary Transformation.* As used in the FPT rate schedules, transformation from Main Grid to Secondary System facilities.

V. *Southern Intertie.* The segment of the FCRTS for which the major transmission facilities consist of two 500 kV AC lines from John Day Substation to the Oregon-California border, a portion of the 500 kV AC line from Buckley Substation to Summer Lake Substation, and one 1,000 kV DC line between the Celilo Substation and the Oregon-Nevada border, and associated substation facilities.

W. *Transmission Service.* As used in the MT rate schedule, Transmission Service is as defined in the WSPP Agreement.

Section IV. Billing Information

A. *Payment of Bills.* Bills for transmission service shall be rendered monthly by BPA. Failure to receive a bill shall not release the customer from liability for payment. Bills for amounts due of $50,000 or more must be paid by direct wire transfer; customers who expect that their average monthly bill will not exceed $50,000 and who expect special difficulties in meeting this requirement may request, and BPA may approve, an exemption from this requirement. Bills for amounts due BPA under $50,000 may be paid by direct wire transfer or mailed to the Bonneville Power Administration, P.O. Box 6040, Portland, Oregon 97228–6040, or to another location as directed by BPA. The procedures to be followed in making direct wire transfers will be provided by the Office of Financial Management and updated as necessary.

1. *Computation of Bills.* The transmission billing determinant is the electric power quantified by the method specified in the Agreement or Transmission Rate Schedule. Scheduled power or metered power will be used.

The transmission customer shall provide necessary information to BPA for any computation required to determine the proper charges for use of the FCRTS, and shall cooperate with BPA in the exchange of additional information which may be reasonably useful for respective operations.

Demand and energy billings for transmission service under each applicable rate schedule shall be rounded to whole dollar amounts, by eliminating any amount which is less than 50 cents and increasing any amounts from 50 cents through 99 cents to the next higher dollar.

2. *Estimated Bills.* At its option, BPA may elect to render an estimated bill to be followed at a subsequent billing date

by a final bill. The estimated bill shall have the validity of and be subject to the same payment provisions as a final bill.

3. *Due Date.* Bills shall be due by close of business on the 20th day after the date of the bill (due date). Should the 20th day be a Saturday, Sunday, or holiday (as celebrated by the customer), the due date shall be the next following business day.

4. *Late Payment.* Bills not paid in full on or before close of business on the due date shall be subject to a penalty charge of $25. In addition, an interest charge of one-twentieth percent (0.05 percent) shall be applied each day to the sum of the unpaid amount and the penalty charge. This interest charge shall be assessed on a daily basis until such time as the unpaid amount and penalty charge are paid in full.

Remittances received by mail will be accepted without assessment of the charges referred to in the preceding paragraph provided the postmark indicates the payment was mailed on or before the due date. Whenever a power bill or a portion thereof remains unpaid subsequent to the due date and after giving 30 days' advance notice in writing, BPA may cancel the contract for service to the customer. However, such cancellation shall not affect the customer's liability for any charges accrued prior thereto under such agreement.

5. *Disputed Billings.* In the event of a disputed billing, full payment shall be rendered to BPA and the disputed amount noted. Disputed amounts are subject to the late payment provisions specified above. BPA shall separately account for the disputed amount. If it is determined that the customer is entitled to the disputed amount, BPA shall refund the disputed amount with interest, as determined by BPA's Office of Financial Management.

BPA retains the right to verify, in a manner satisfactory to the Administrator, all data submitted to BPA for use in the calculation of BPA's rates and corresponding rate adjustments. BPA also retains the right to deny eligibility for any BPA rate or corresponding rate adjustment until all submitted data have been accepted by BPA as complete, accurate, and appropriate for the rate or adjustment under consideration.

6. *Revised Bills.* At its option, BPA may render a revised bill. A revised bill shall replace all previous bills issued by BPA that pertain to a specified customer for a specified billing period if the amount of the revised bill is less than the amount of the original bill. If the amount of the revision causes an additional amount to be due BPA beyond the original bill, a revised bill will be issued for the difference.

The date of the revised bill shall be determined as follows:

a. If the amount of the revised bill is equal to or less than the amount of the bill which it is replacing, the revised bill shall have the same date as the replaced bill.

b. If the amount of the revised bill is greater than the amount of the bill which it is replacing, the date of the revised bill shall be its date of issue.

Issued in Portland, Oregon, on February 8, 1989.

Jack Robertson,

Deputy Administrator.

[FR Doc. 89-4211 Filed 2-21-89; 9:46 am]

BILLING CODE 6450-01-M

Proposal To Readopt the 1987 Wholesale Power Rates, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of and Opportunities for Review and Comment. *BPA File No:* WP-89. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation WP-89.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) states that BPA must establish and periodically review and revise BPA's rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS). BPA has reviewed its current wholesale power rate schedules which became effective on October 1, 1987. Based on this review, BPA has determined that current wholesale power rate schedules will continue to produce sufficient revenue for BPA to meet its statutory requirements for Fiscal Years (FY) 1990 and 1991. BPA therefore is proposing to extend its 1987 rates by readopting its 1987 Rate Schedules, with a modified Cost Recovery Adjustment Clause, as its 1989 wholesale power rate schedules to be effective through FY 1990 and 1991.

Through a separate public involvement process, BPA has completed a thorough review of program cost levels for the budget for FY 1990 and 1991. The Administrator will not reexamine program level decisions in the rate case.

Beginning in October 1988, BPA conducted a series of workshops on subjects relevant to BPA's ratesetting. The purpose of the workshops was to identify, simplify and reduce the numbers of issues that might become a part of a 1989 rate case. All parties to the 1987 rate case were informed of and invited to the workshops. The workshops were well attended and provided opportunities for informal public comment on issues outside the formal hearing process.

Opportunities will be available for interested persons to review BPA's proposal to readopt the 1987 rates based on the existing supporting studies, to participate in the rate hearing, and to submit written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this notice.

Responsible Official: Ms. Shirley R. Melton, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's rates.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so in accordance with requirements stated in this notice. The petitions to intervene must be received by March 10, 1989, and should be addressed as follows: Honorable Seymour F. Wenner, Hearing Officer, c/o John Ciminello-APR, Hearing Clerk, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. In addition, a copy of the intervention must be served on BPA's Office of General Counsel/APR, P.O. Box 3621, Portland, Oregon 97208. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances.

BPA will prefile the studies and testimony of its witnesses on March 8, 1989. Copies will be available in the Public Information Center and will be mailed to all parties to the 1987 rate proceeding.

A prehearing conference will be held before the Hearing Officer at 9 a.m. on March 16, 1989, in Room 106 of the BPA Headquarters Building, 905 NE. 11th Avenue, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish

additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs as are determined necessary and for expediting any necessary cross examination. A notice of the dates and times of any hearings will be mailed to all parties of record. Objections to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference.

The following proposed schedule is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

March 8, 1989—Initial studies available at BPA's Public Information Center, 905 NE. 11th, 1st Floor, Portland, Oregon.

March 10, 1989—Deadline for interventions to be filed with Hearing Clerk at above address.

March 13, 1989—Technical Session to discuss studies and testimony.

March 16, 1989—Prehearing Conference to set schedule and act on petitions to intervene.

March 31, 1989—Participant's written comments due.

No Later Than July 29, 1989—Final Record of Decision.

Written comments by participants may be submitted until the close of all hearings.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager—ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Cunningham Byrnes, Public Involvement Office, at the address listed above, 503–230–3478. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Robert Rasmussen, Acting Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109–1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On December 23, 1988, in order to satisfy contractual provisions between BPA and its customers, BPA published in the **Federal Register** a notice of "Intent to Revise Wholesale Power Rates to Become Effective October 1, 1989," 53 FR 51890. Since then, BPA has continued to study the adequacy of its current rates and has concluded that current rates, with a modified Cost Recovery Adjustment Clause (CRAC), will be adequate for the FYs 1990–1991 rate period.

In order to assess its current rates, BPA first determined the amount of revenue required to meet its financial obligations in FY 1990 and 1991. BPA has determined that the revenues BPA would expect to collect from projected loads under its current rates will adequately cover these revenue requirements. Therefore, BPA proposes to readopt and refile the current 1987 wholesale power rates as the proposed 1989 wholesale power rates. BPA files its rates with the Federal Energy Regulatory Commission (FERC). However, BPA proposes to replace the 1987 Cost Recovery Adjustment Clause with a similar but redesigned version. The new proposed CRAC is defined in this **Federal Register** Notice within affected rate schedules and in the General Rate Schedule Provisions (GRSPs).

The proposed wholesale power rates were prepared in accordance with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C. 832e, f (1982); the Flood Control Act of 1944, 16 U.S.C. 825s (1982); the Regional Preference Act, 16 U.S.C. 837 (1982); the Federal Columbia River Transmission System Act, 16 U.S.C. 838g, h (1982); and the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839 (1982).

The rate schedules contained in this publication were established, in accordance with the Northwest Power Act, which was signed into law on December 5, 1980. The proposed rate schedules reflect many requirements contained principally in the Northwest Power Act's rate directives (section 7), as well as the conditions related to classes of customers and services contained in the Northwest Power Act's power sales directives (section 5).

BPA proposes that its wholesale power rate schedules and the General Rate Schedule Provisions associated with these schedules become effective upon interim approval or final confirmation and approval by the FERC. BPA will request FERC approval effective October 1, 1989. Section I.A. of the GRSP's specifies the proposed effective date for each rate.

The 1989 wholesale power rate schedules, and the GRSPs associated with these rate schedules, are, with the exception of a modified CRAC (and a few other changes identified in Section IV below), identical to BPA's 1987 rate schedules. They supersede BPA's 1987 rate schedules (which became effective October 1, 1987) to the extent stated in the Availability section of each 1989 rate schedule. These schedules and GRSPs shall be applicable to all BPA contracts, including contracts executed both prior to and subsequent to enactment of the Northwest Power Act.

In developing the proposed wholesale power rates, BPA considered many factors, including revenue requirements, ease of administration, revenue stability, rate continuity, ease of comprehension, and BPA's statutory obligations. The studies that have been prepared to support the proposed rates will be available for examination on March 8, 1989, at BPA's Public Information Center, BPA Headquarters Building, first floor, 905 NE. 11th Avenue, Portland, Oregon. The studies will be mailed to all parties to BPA's 1987 rate case. The studies also may be requested by phone or in writing from BPA's Public Involvement office and will be available at the Prehearing Conference. The studies are:

1. Revenue Requirement Study and Technical Documentation.

2. Revenue Forecast Study and Technical Documentation.

Persons seeking to become parties should not wait until the prehearing conference to obtain copies of the studies. Rather, potential parties should obtain the studies as soon as they are available so that they are conversant with them at the time of the prehearing conference. Parties appearing at the prehearing conference shall be required to state whether they will oppose BPA's rate proposal, provided that BPA will have first offered satisfactory assurance that no substantive or procedural precedent shall arise by virtue of the substance, manner, or form of BPA's, or any other party's action in connection with the rate proposal, and that the extended rates suffer the same entire or partial legality as the 1987 wholesale power rates. The March 13, 1989, technical session is provided to assist parties in their evaluation of BPA's proposal.

To request either of the studies by telephone, call BPA's document request line: 800–841–5867 for Oregon; 800–624–9495 for Washington, Idaho, Montana, California, Wyoming, Utah, and Nevada. Other callers should use 503–230–3478. Please request the study by its above title. Also state whether you require the accompanying technical documentation; otherwise the study alone will be provided. (For example, ask for the "Revenue Requirement Study and Technical Documentation.")

II. Procedures Governinq Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that rates be established according to certain procedures. These procedures include, among other things, issuance of a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986), which implements, and in most instances expands, the statutory requirements. The proceedings for BPA's proposal to readopt transmission rates will be combined with the proceedings for BPA's proposal for readopt wholesale power rates.

Among BPA's major customer groups, none have expressed opposition to the proposal to readopt rates. Thus, the Administrator firmly expects that the parties will not avail themselves of the opportunity for hearing afforded by BPA's procedures. In that event, and upon due and appropriate motion, the Hearing Officer will truncate the proceedings so that participants may be quickly heard and parties extended the opportunity to comment on the Administrator's Draft Record of Decision. Should a truncated procedure be adopted, the Administrator directs the Hearing Officer to incorporate by reference the Official Record compiled in BPA's 1987 Wholesale Power and Transmission Rate proceeding into the Official Record in this proceeding.

The hearing will be conducted according to the rule for general rate proceedings, § 1010.9 of BPA's Procedures Governing Bonneville Power Administration Rate Hearings. BPA's procedures provide for publication of a notice of the proposed rates, a prehearing conference, the opportunity for hearing, receipt of written comments, preparation of decisional documents, a decision, and the transmittal of the decision with supporting documentation to the Federal Energy Regulatory Commission.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the procedures as any person who may express his views, but who does not successfully petition to intervene as a party. Participants' written comments will be made part of the official record of the case and considered by the Administrator. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties." Participants are not entitled to participate in the prehearing conference, cross examine parties' witnesses, seek discovery, or serve or be served with documents, and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are submitted before the close of the hearings. Written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement office.

The second category of interest is that of a "party" as defined in §§ 1010.2 and 1010.4 of "The Procedures Governing Bonneville Power Administration Rate Hearings." 51 FR 7611 (March 5, 1986). Parties may participate in any aspect of the hearing process.

Persons wishing to become a formal "party" to BPA's rate proceeding must notify BPA in writing of their request. These petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Any opposition to a petition to intervene must be filed and served at least 24 hours before the March 16 prehearing conference. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of the petition. Intervention petitions will be available for inspection in BPA's Public Information Center, first floor, 905 NE. 11th Avenue, Portland, Oregon. Interventions are subject to § 1010.4 of BPA's Procedures Governing Bonneville Power Administration Rate Hearings.

The record will include, among other things, the transcripts of any hearings, any written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop the final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates will be first expressed in the Administrator's Draft Record of Decision (ROD). Parties will have an opportunity to comment on the draft as provided in BPA's hearing procedures. Absent comment, the Draft ROD will become Final. If comment is made, a Final ROD will be issued. The Administrator will serve copies of the Administrator s Record of Decision on all parties and will file the final proposed rates together with the record with the Federal Energy Regulatory Commission for confirmation and approval.

III. Major Studies and Issues

A. Major Studies

1. Revenue Requirement Study

The Bonneville Project Act, the Flood Control Act of 1944, the Federal Columbia River Transmission System Act, and the Northwest Power Act require BPA to design rates that are projected to return revenues sufficient to recover the cost of acquiring, conserving, and transmitting the electric power that BPA markets, including the amortization of the Federal investment in the FCRPS over a reasonable period, and to recover BPA's other costs and expenses. The Revenue Requirement Study includes a determination that current rates will produce enough revenue to recover all BPA costs and expenses, including BPA's repayment obligations to the United States Treasury.

The Transmission System Act and the Northwest Power Act require that transmission rates be based on an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. In compliance with a Federal Energy Regulatory Commission (FERC) order dated January 27, 1984, 26 FERC 61,096, the Revenue Requirement Study incorporates the results of separate repayment studies for the generation and transmission components of the FCRPS. The repayment studies for generation and transmission demonstrate the adequacy of the projected revenues to recover all of the Federal investment in the FCRPS over the allowable repayment period. The adequacy of projected revenues to recover cost evaluation period revenue requirements and to meet repayment period recovery of the Federal investment are tested and demonstrated separately for the generation and transmission functions.

The Revenue Requirement Study for the 1989 initial rate proposal is based on revenue and cost estimates for FY 1990 and 1991. BPA's Revenue Requirement Study reflects actual amortization and interest payments paid through September 30, 1988. In addition, it reflects all FCRPS obligations incurred pursuant to the Northwest Power Act, including exchange costs.

2. Revenue Forecast Study.

The Revenue Forecast Study is divided into two parts. The first part, the Revenue Forecast, documents BPA's loads, resources, contracts, and revenues that are the basis for BPA's base case forecast. The second part, the Risk Assessment, documents the various risk factors and probabilities associated with these risk factors that cause BPA's revenues to vary. The Revenue Forecast Study also documents several models that are used to prepare the Revenue Forecast and Risk Assessment, such as the load forecasting models, the Marketing Linear Programming Model, the Federal Secondary Energy Analysis, the Nonfirm Revenue Analysis Program, the Revenue Estimating Program, and the Risk Analysis Program.

The Revenue Forecast separately identifies revenues by rate schedule including Priority Firm, Variable Industrial, Industrial Firm, Surplus Firm, Nonfirm, Firm Capacity, and various transmission service charges (e.g., Intertie North, Intertie South, Formula Power, Integration of Resources, Incidental Network Transmission, TGT, UFT, and O&M). It also accounts for other revenue sources such as WNP–1 exchange, the WNP–3 settlement, Coordination Agreement (charges) revenues, USBR pumping power, and several other miscellaneous categories of revenues. All of these revenues are documented for FY 1989–1991 on a monthly basis in the Revenue forecast.

BPA revenues are subject to significant variation due to several variables. To measure the impact of these variables on BPA revenues, BPA performs a Risk Assessment Analysis. The Risk Assessment Analysis examines five variables that have a significant effect on BPA's revenues and includes high, medium and low forecasts for these variables. The five variables are the economy (which includes aluminum prices and employment); the marketing environment (which includes natural gas prices and surplus power sales); streamflow conditions (precipitation); thermal resource performance; and resolution of WNP–1 exchange contract issues. These events are assumed to be independent of each other. A range of revenue outcomes is developed for each year (FYs 1989–1991) from 243 possible scenarios. Probabilities are developed for each scenario based on the assumption that these events are independent. Each revenue scenario is compared to the expenses for FYs 1989 and 1990 to determine whether or not the proposed CRAC would trigger in the following year. The Risk Assessment Study explains this process in greater detail and determines the likelihood that BPA revenues will exceed expenses, and be adequate to meet payments to the Treasury.

B. Other Issues

Cost Recovery Adjustment Clause

BPA has studied various methods of assuring its ability to recover all costs and meet commitments to the U.S. Treasury during the 2-year cost evaluation period. The Cost Recovery Adjustment Clause (CRAC) is the only method proposed for this period that could result in a potential rate adjustment. The CRAC may adjust rates by a percentage determined by predetermined formulas, limited to an adjustment of 10.0 percent. The maximum recovery from a 10.0 percent adjustment is estimated to be approximately $130 million per year. The Administrator has discretion to waive any adjustment.

The CRAC will enhance BPA's ability to make its scheduled U.S. Treasury payments with funds provided from current operations. It is designed to adjust, if necessary, the Priority Firm, Industrial Firm, Variable Industrial, Firm Capacity, and New Resource Firm Power rate schedules.

The CRAC examines the net revenues (revenues minus expenses) for each fiscal year, 1989 and 1990. If the net revenues for either year are less than zero, rates in the following year may be adjusted to recover the shortfall. The adjustment resulting from the examination of net revenues for FY 1989 would be applied from January 1, 1990, through September 30, 1990. The adjustment resulting from the examination of net revenues for FY 1990 would be applied from January 1, 1991, through September 30, 1991.

If any adjustment is made to rates in 1990 due to a net revenue underrun in FY 1989, FY 1990 net revenues will be adjusted before determining the need for or level of a CRAC adjustment in 1991. The adjustment will consist of subtracting the amount of revenues targeted for collection in 1990 through a CRAC adjustment from actual FY 1990 revenues.

If the CRAC is triggered in either year, BPA will convene a public process to review and examine the appropriate data.

IV. Wholesale Power Rate Schedules and General Rate Schedule Provisions

BPA proposes to extend the 1987 Wholesale Power Rates by readopting them as the 1989 Wholesale Power Rates with the following exceptions. First, BPA will not seek further approval or comments on the following: the Variable Industrial Power Rate Schedule (VI–87), the Long-Term Surplus Firm Power Rate Schedule (SL–87), or the NF

Rate Cap. VI–87 is in effect through July 31, 1993, unless BPA elects to terminate the rate at midnight June 30, 1991. Under Modified SL–87, contracts may be negotiated through September 30, 1990. BPA will maintain the NF Rate Cap for the 12-year period starting October 1, 1987 to apply to all nonfirm energy sales.

Second, because of the new CRAC design, the following sections have been changed from the 1987 Wholesale Power Rate Schedules and GRSPs:

Section III.C.5. describing the new CRAC has been replaced with the incorporated text.

Specific CRAC sections in the Priority Firm Power, (section IV.E.), Industrial Firm Power (section IV.C.). Variable Industrial Power (section VI.J.), Firm Capacity (section IV.D.), and New Resource Firm Power (section IV.B.) rate schedules contain minor revisions in order to reflect the changes in the GRSPs.

Finally, the filing of the Modified SL–87 rate schedule in August 1987 included some changes to the GRSPs. Although those changes are not the subject of this rate refiling, they are incorporated in the GRSPs printed in this notice.

Wholesale Power Rate Schedules and General Rate Schedule Provisions

Table of Contents

Schedule PF–89 Priority Firm Power Rate

Section I. Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest. Priority Firm Power may be purchased by public bodies, cooperatives, and Federal agencies for resale to ultimate consumers, for direct consumption, construction, test and start-up, and station service.

Utilities participating in the exchange under section 5(c) of the Northwest Power Act may purchase Priority Firm Power pursuant to their Residential Purchase and Sale Agreements.

In addition, Bonneville Power Administration (BPA) may make power available to those parties participating in exchange agreements which use this rate schedule as the basis for determining the amount or value of power to be exchanged.

This schedule supersedes Schedule PF–87 which went into effect on an interim basis on October 1, 1987. Sales under this schedule are made subject to BPA's General Rate Schedule Provisions.

Section II. Rate

This rate schedule includes the Preference rate and the Exchange rate. The Preference rate is available for the general requirements of public body, cooperative and Federal agency customers and includes credit attributed to the provision of section 7(b)(2) of the Northwest Power Act. The Exchange rate is available for all purchases of residential and small farm exchange power pursuant to the Residential Purchase and Sale Agreements.

A. Preference Rate

1. *Demand Charge.* a. $3.46 per kilowatt of billing demand occurring during all Peak Period hours.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 18.4 mills per kilowatthour of billing energy for the billing months September through March;

b. 14.4 mills per kilowatthour of billing energy for the billing months April through August.

B. Exchange Rate

1. *Demand Charge.* a. $3.56 per kilowatt of billing demand occurring during all Peak Period hours.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 19.1 mills per kilowatthour of billing energy for the billing months September through March;

b. 15.1 mills per kilowatthour of billing energy for the billing months April through August.

Section III. Billing Factors

In this section, billing factors are listed for each of the following types of purchasers: computed requirements purchasers (section III.A), purchasers of residential exchange power pursuant to the Residential Purchase and Sale Agreements (section III.B), and metered requirements purchasers and those Priority Firm Power purchasers not covered by sections III.A and 111.B (section III.C).

A. Computed Requirements Purchasers

Purchasers designated by BPA as computed requirements purchasers pursuant to power sales contracts shall be billed in accordance with the provisions of this subsection.

1. *Billing Demand.* The billing demand for actual, planned, and contracted computed requirements purchasers shall be the higher of the billing factors "a" and "b," below:

a. The lower of:

(1) The larger of the Computed Peak Requirement or the Computed Average Energy Requirement; or

(2) The Measured Demand, before adjustment for power factor.

b. The lower of:

(1) The Computed Peak Requirement, or

(2) 60 percent of the highest Computed Peak Requirement during the previous 11 billing months (Ratchet Demand).

2. *Billing Energy.* The billing energy for actual, planned, and contracted computed requirements purchasers shall be:

a. For the months September through March, the sum of:

(1) 78 percent of the Measured Energy (excluding unauthorized increase), and

(2) 22 percent of the Computed Energy Maximum.

b. For the months April through August, the sum of:

(1) 57 percent of the Measured Energy (excluding unauthorized increase), and

(2) 43 percent of the Computed Energy Maximum.

B. Purchasers of Residential Exchange Power

Purchasers buying Priority Firm Power under the terms of a Residential Purchase and Sale Agreement shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the demand calculated by applying the load factor, determined as specified in the Residential Purchase and Sale Agreement, to the billing energy for each billing period.

2. *Billing Energy.* The billing energy shall be the energy associated with the utility's residential load for each billing period. Residential load shall be computed in accordance with the provisions of the purchaser's Residential Purchase and Sale Agreement.

C. Metered Requirements Purchasers, Other Purchasers Not Covered by Sections III.A and III.B, Above

Purchasers designated as metered requirements customers and purchasers taking or exchanging power under this rate schedule who are not otherwise covered by sections III.A and III.B shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the Measured Demand as adjusted for power factor, unless otherwise specified in the power sales contract.

2. *Billing Energy.* The billing energy shall be the Measured Energy, unless otherwise specified in the power sales contract.

Section IV. Adjustments and Special Provisions

A. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

B. Low Density Discount (LDD)

BPA shall apply a discount to the charges for all Priority Firm Power sold to purchasers who are eligible for an LDD. Eligibility for the LDD and the amount of the discount (3, 5, or 7 percent) shall be determined pursuant to section III.C.3 of the GRSPs.

C. Irrigation Discount

BPA shall apply an irrigation discount, equal to 4.6 mills per kilowatthour, to the charges for qualifying energy purchased under this rate schedule. The irrigation discount shall be applied after calculation of the Low Density Discount. The discount shall apply only to energy purchased during the billing months of April through October. Eligibility for the irrigation discount and reporting requirements shall be determined pursuant to section III.C.4 of the GRSPs.

D. Conservation Surcharge

The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The Conservation Surcharge shall be applied pursuant to section III.C.7 of the GRSPs and subsequent to any other rate adjustments.

E. Cost Recovery Adjustment Clause

The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs shall be applied to all purchases and exchanges under this rate schedule. The percentage increase calculated in section III.C.5.c of the GRSPs shall be applied uniformly to the demand and energy charges contained in sections II.A and II.B and the irrigation discount contained in section IV.C of this rate schedule. An additional increase of .046 mills per kilowatthour shall be made to the irrigation discount for each percentage increase in the PF rates due to the Cost Recovery Adjustment Clause.

F. Outage Credit

Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser for those hours for which BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Priority Firm Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

G. Unauthorized Increase

BPA shall apply the charge for Unauthorized Increase to any purchaser of Priority Firm Power taking demand and energy in excess of its contractual entitlement.

1. *Rate for Unauthorized Increase.* 67.3 mills per kilowatthour.

2. *Calculation of the Amount of Unauthorized Increase.* Each 60-minute clock-hour integrated or scheduled demand shall be considered separately in determining the amount that may be considered an unauthorized increase. BPA first shall determine the amount of unauthorized increase related to demand and shall treat any remaining unauthorized increase as energy-related.

a. *Unauthorized Increase in Demand.* That portion of any Measured Demand during Peak Period hours, before adjustment for power factor, which exceeds the demand that the purchaser is contractually entitled to take during the billing month and which cannot be assigned:

(1) To a class of power that BPA delivers on such hour pursuant to contracts between BPA and the purchaser; or

(2) To a type of power that the purchaser acquires from sources other than BPA and that BPA delivers during such hour, shall be billed:

(1) In accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) If such exhibit does not apply or is not a part of the purchaser's power sales contract, at the rate for Unauthorized Increase, based on the amount of energy associated with the excess demand.

b. *Unauthorized Increase in Energy.* The amount of Measured Energy during a billing month which exceeds the amount of energy which the purchaser is contractually entitled to take during that month and which cannot be assigned:

(1) To a class of power which BPA delivers during such month pursuant to contracts between BPA and the purchaser; or

(2) To a type of power which the purchaser acquires from sources other than BPA and which BPA delivers during such month, shall be billed:

(1) In accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) As unauthorized increase if such exhibit does not apply or is not a part of the purchaser's power sales contract.

H. Coincidental Billing Adjustment

Purchasers of Priority Firm Power who are billed on a coincidental basis and who have diversity charges or diversity factors specified in their power sales contracts shall have their charges for billing demand adjusted according to the provisions of section III.C.6 of the GRSPs. Computed requirements purchasers are not subject to the Coincidental Billing Adjustment for scheduled power.

I. Energy Return Surcharge

Any purchaser who preschedules in accordance with sections 2(a)(4) and 2(c)(2) of Exhibit E of the power sales contract and who returns, during a single offpeak hour, more than 60 percent of the difference between that purchaser's computed peak requirement and computed average energy requirement for the billing month shall

be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.49 mills per kilowatthour for the months of April through October;

2. 1.48 mills per kilowatthour for the months of November through March.

Section V. Resource Cost Contribution

BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the PF–89 rate is 78.5 percent FBS and 21.5 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour.

Schedule IP–89 Industrial Firm Power Rate

Section I. Availability

This schedule is available to direct-service industrial (DSI) customers for both the contract purchase of Industrial Firm Power and the purchase of Auxiliary Power if requested by the DSI customer and made available by BPA. If a DSI customer purchasing power under this rate schedule requests and BPA makes available power under another applicable wholesale rate schedule the IP–89 rate schedule is available for that portion of power purchased not covered under the alternative rate schedule. This rate schedule supersedes Schedule IP–87 which went into effect on an interim basis on October 1, 1987. Sales under this schedule are made subject to BPA's General Rate Schedule Provisions.

Section II. Rate

The following rates shall be applied when first quartile service is provided under this rate schedule in accordance with the terms of a purchaser's Power Sales Contract dated August 25, 1981. A separate billing adjustment for the reserves provided by the purchasers of Industrial Firm Power is not contained in this rate schedule; the value of reserves credit has been included in the determination of the demand and energy charges.

Any contractual reference to the IP Premium Rate shall be deemed to refer to the demand and energy charges set forth below. Any reference to the IP Standard Rate shall be deemed to refer to the same demand and energy charges minus the Discount for Quality of Service.

A. Demand Charge

1. $4.14 per kilowatt of billing demand occurring during all Peak Period hours.

2. No demand charge during Offpeak Period hours.

B. Energy Charge

1. 19.5 mills per kilowatthour of billing energy for the billing months September through March;

2. 15.6 mills per kilowatthour of billing energy for the billing months April through August.

Section III. Billing Factors

A. Billing Demand

The billing demand shall be the BPA Operating Level during the Peak Period as adjusted for power factor. If there is more than one BPA Operating Level during the Peak Period within a billing month, the billing demand shall be a weighted average of the BPA Operating Levels during the Peak Period for the billing month. The BPA Operating Level is defined in section III.A.10 of the General Rate Schedule Provisions (GRSPs). If BPA has agreed to serve a portion of a DSI load under an alternative rate schedule, the billing demand under the IP–89 rate schedule shall be specified in the contract initiating such arrangement.

However, if BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Industrial Firm Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C.3 of the GRSPs.

B. Billing Energy

The billing energy shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

However' if BPA has agreed to serve only a portion of the DSI's load under the IP rate schedule, the billing energy for the power purchased under the IP rate shall be specified in the contract initiating such arrangement.

Section IV. Adjustments and Special Provisions

A. Discount for Ouality of First Ouartile Service

1. Application and Amount of First Ouartile Discount If a purchaser requests discounted rate service, a discount of 0.6 mills per kilowatthour of billing energy shall be granted. This billing credit shall be applied to the monthly billing energy under section III.B for all power purchased under this rate schedule. No credit shall be applied to those purchases subject to unauthorized increase charges under section IV.D of this rate schedule.

2. Eligibility Requirements for First Quartile Discount. To qualify for the First Quartile Discount the purchaser must request discounted rate service in writing by April 2 of each calendar year. By virtue of making such request, the Purchaser is agreeing to accept the level and quality of First Quartile service described in section 6 of the Variable Industrial Rate contract. Such acceptance includes the waiver of contract rights provided in section 6.a(2)(a) of said contract.

B. Curtailments

BPA shall charge the DSI for curtailments of the lower three quartiles in accordance with the provisions of section 9 of the power sales contract. BPA shall apply the demand charge in effect at the time of the curtailment in the computation of the amount of the curtailment charge. In the event that a purchaser is found to be eligible to have a portion of their load served under an alternative rate schedule, application of the curtailment charge shall be specified in the contract instituting such arrangement.

C. Cost Recovery Adjustment Clause

The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs shall be applied to all power purchases under this rate schedule.

Application of the Cost Recovery Adjustment Clause shall result in a uniform adjustment applied to the demand and energy charges, contained in sections II.A and II.B of this rate schedule, and the first quartile discount, if applicable, contained in section IV.A.1 of this rate schedule.

The uniform percentage (CRAC?) determined in Section III.C.5.c. of the GRSPs shall be applied in the following manner:

$$\frac{(1 + \text{CRAC\%})}{100} \cdot \frac{22.8}{23.5}$$ times the demand, energy, and first quartile discount charges.

where: 22.8 represents the average IP–89 margin-based rate in mills per kilowatthour, and 23.5 represents the average IP–89 flour rate in mills per kilowatthour.

D. Unauthorized Increase

1. *Rate for Unauthorized Increase.* 67.3 mills per kilowatthour.

2. *Application of the Charge.* During any billing month, BPA may assess the unauthorized increase charge on the number of kilowatthours associated with the DSI Measured Demand in any one 60-minute clock-hour, before adjustment for power factor' that exceed the BPA Operating Level for that clock-hour, regardless of whether such Measured Demand occurs during the Peak or Offpeak Period.

E. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made i? accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power f'actor in whole or in part.

F. Outage Credit

Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any DSI for those hours for which BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Industrial Firm Power. Such credit shall not be provided if BPA is able to serve the DSI's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

Section V. Resource Cost Contribution

BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the IP–B9 rate is 99.3 percent Exchange and 0.7 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour. Schedule SI–89 Special Industrial Power Rate

Section I. Availability

This rate schedule is available to any DSI purchaser using raw minerals indigenous to the region as its primary resource and qualifying for this special power pursuant to the procedures established in section 7(d)(2) of the Northwest Power Act. This schedule is available for the contract purchase of this special class of industrial power and also for the purchase of Auxiliary Power if requested by the DSI and made available by BPA. The Special Industrial Offpeak rate available for Hanna Nickel Smelting Company pursuant to the Amendatory Agreement executed July 1, 1985. remains in force and is retained herein. Except for the Special Industrial Offpeak rate, schedule SI–89 supersedes schedule SI–87 which went into effect on an interim basis on October 1. 1987. Sales under this schedule are made subject to BPA's General Rats Schedule Provisions.

Section II. Rate

This rate schedule contains the Standard Special Industrial Power Rate and the Special Industrial Offpeak Rate. The Standard Special Industrial Power Rate is available to any qualifying DSI for full service provided during all hours of the day. The Special Industrial Offpeak Rate is a lower rate available to the Hanna Nickel Smelting Company (Hanna) for service during periods specified by BPA. A separate billing adjustment for the value of the reserves provided by purchasers of this special class of Industrial Power is not contained in the rate schedule; the adjustment is reflected in the Standard Special Industrial Power Rate.

A. Standard Special Industrial Power Rate

1. *Demand Charge.* a. $3.08 per kilowattmonth of billing demand occurring during all Peak Period hours.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 16.9 mills per kilowatthour of billing energy for the billing months September through March;

b. 12.9 mills per kilowatthour of billing energy for the billing months April through August.

B. Special Industrial Offpeak Rate

1. *Demand Charge.* No demand charge in any hour of the day.

2. *Energy Charge.* 7.0 mills per kilowatthour of billing energy during all billing months.

Section III. Billing Factors

A. Billing Demand

1. *Standard Special Industrial Power Rate.* The billing demand for power purchased under the Standard Special Industrial Power Rate shall be the BPA Operating Level during the Peak Period as adjusted for power factor. If there is more than one BPA Operating Level during the Peak Period within a billing month, the billing demand shall be a weighted average of the Peak Period BPA Operating Levels for the billing month. The BPA Operating Level is defined in section III.A.10 of the General Rate Schedule Provisions (GRSPs).

However, if BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Special Industrial Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C of the GRSPs.

2. *Special Industrial Offpeak Rate.* There is no billing demand for purchases under the Special Industrial Offpeak rate.

B. Billing Energy

The billing energy under both the Standard Special Industrial and Special Industrial Offpeak Rates shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

The kilowatthours of billing energy shall be prorated among the respective billing demands for the billing month.

Section IV. Selection of the SI–89 Rate for the Hanna Nickel Smelting Company

All purchasers, except for Hanna, shall purchase power under the Standard Special Industrial Power rate. Hanna shall have the option to select one of two types of service, standard service or offpeak service. In this case, BPA will provide standard service under the Standard Special Industrial Power Rate and offpeak service under the Special Industrial Offpeak Rate. Unless BPA receives a formal request from Hanna for service under the Special Industrial Offpeak Rate, all service will be standard service provided under the Standard Special Industrial Power Rate. To change the type of service provided and the associated rate, Hanna shall submit a formal request for service under the preferred rate option in accordance with the terms of the power sales contract providing for purchases under this rate schedule. Once Hanna has elected to purchase under one of the two options, all purchases of Special Industrial Power shall be subject to the terms and conditions of that rate option until such time that Hanna requests the other type of service.

Section V. Service Under the Special Industrial Offpeak Rate

BPA shall designate the hours during which offpeak service will be available, and shall provide at least 2 weeks' notice before changing those designated hours. BPA shall identify at least 10 and up to 13 hours on each day Monday through Friday, 15 hours on Saturday, and 24 hours on Sunday, during which offpeak service will be available to the purchaser.

If Hanna has elected to be served under the Special Industrial Offpeak Rate, Hanna may request, during the designated offpeak periods, service in an amount not to exceed the purchaser's Contract Demand. During all other hours Hanna shall curtail service to a level not to exceed 15 percent of Contract Demand.

Section VI. Adjustments and Special Provisions

A. Curtailments

BPA shall charge the DSI for curtailments in accordance with the provisions of the DSI's power sales contract. Any curtailment charge levied shall be computed using the Standard Special Industrial Power Rate.

B. Unauthorized Increase Charge

1. Rate for Unauthorized Increase. 67.3 mills per kilowatthour.

2. Application of the Charge. During any billing month, BPA may assess the unauthorized increase charge on the number of kilowatthours associated with the DSI Measured Demand in any one 60-minute clock-hour, before adjustment for power factor, that exceed the BPA Operating Level for that clock-hour, regardless of whether such Measured Demand occurs during the Peak or Offpeak Period.

If BPA is providing service to Hanna under the Special Industrial Offpeak Rate, the amount by which Hanna's Measured Demand exceeds 15 percent of its Contract Demand during any hour other than the specified special hours shall be considered unauthorized increase.

C. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment for service under the Standard Special Industrial Power Rate. BPA shall increase the billing demand by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. For service under the Special Industrial Offpeak Rate, BPA shall increase the billing energy by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

D. Outage Credit

Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser for those hours for which BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Special Industrial Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. In addition, no credit shall be applied to purchases under the Special Industrial Offpeak Rate. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

E. Extended Service Provision.

The terms of this rate schedule may be extended for a period not to exceed June 30, 1990, in accordance with the Amendatory Agreement effective July 1, 1985, with the Hanna Nickel Smelting Company (Hanna). The Amendatory Agreement contains Hanna's agreement to make certain investments in a wet screening process at its Riddle facility.

Section VII. Resource Cost Contribution

BPA has made the following determinations:

A. The SI–B9 rate is not based on the cost of resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour.

Schedule CF–89 Firm Capacity Rate

Section I. Availability

This schedule is available for the purchase of Firm Capacity without energy on a Contract Demand basis. This schedule is available only to those purchasers holding Firm Capacity contracts executed prior to July 1, 1985. It supersedes Schedule CF–87 which went into effect on an interim basis on October 1, 1987. Sales under this schedule are made subject to BPA's General Rate Schedule Provisions.

Section II. Rate

$42.48 per kilowatt per year of Contract Demand, billed monthly at the rate of $3.54 per kilowattmonth of Contract Demand.

Section III. Billing Factors

The billing demand shall be the Contract Demand.

Section IV. Adjustments and Special Provisions

A. Conservation Surcharge

The Conservation Surcharge shall be applied in accordance with section III.C.7 of the General Rate Schedule Provisions (GRSPs) and subsequent to any other rate adjustments.

B. Extended Peaking Surcharge

The monthly capacity rate specified in section II above shall be increased by the following extended peaking surcharge to compensate BPA for each hour that the purchaser's monthly demand duration exceeds 8 hours:

1. $0.0908 per kilowatt per hour of extended peaking for the months April through October;

2. $0.0512 per kilowatt per hour of extended peaking for the months November through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

The purchaser's monthly demand duration shall be determined by dividing:

1. The kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

2. The purchaser's Contract Demand for such month.

The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds 8 hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

C. Energy Return Surcharge

The energy associated with the delivery of Firm Capacity must be returned to BPA in accordance with the terms of the purchaser's Firm Capacity Contract. Unless waived by BPA, any purchaser whose energy returns during any single hour exceed 60 percent of the purchaser's Contract Demand during any single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.49 mills per kilowatthour for the months April through October, and

2. 1.48 mills per kilowatthour for the months November through March.

D. Cost Recovery Adjustment Clause

The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs shall be applied to all purchases under this rate schedule. The percentage increase calculated in sections III.C.5.c of the GRSPs shall be applied to the demand charges contained in section II of this rate schedule.

Section V. Resource Cost Contribution

BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the CF–89 rate is 75.1 percent FBS and 24.9 percent Exchange for contract year service.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour.

Schedule CE–89 Emergency Capacity Rate

Section I. Availability

This schedule is available for the purchase of capacity:

A. When an emergency exists on the purchaser's system, or

B. When the purchaser wishes to displace higher-cost firm capacity resources which are otherwise available to meet the purchaser's load, provided the purchaser requests such capacity and BPA has capacity available for such purpose.

This schedule supersedes Schedule CE–87 which went into effect on an interim basis on October 1, 1987. Sales under this schedule are made subject to BPA's General Rate Schedule Provisions.

Section II. Rate

A. Demand Charge

$1.06 per kilowatt of demand per calendar week or portion thereof.

B. Intertie Charge

The demand charge specified above shall be increased by $0.15 per kilowatt per week for capacity made available at the Oregon-California or Oregon-Nevada border for delivery over the Pacific Northwest-Pacific Southwest (Southern) Intertie.

Section III. Billing Factors

The billing demand shall be the maximum amount requested by the purchaser and made available by BPA during a calendar week. If BPA is unable to meet subsequent requests by a purchaser for delivery at the demand previously established during such week, the billing demand for that week shall be the lower demand which BPA is able to supply.

Section IV. Billing Period

Bills shall be rendered monthly.

Section V. Special Provision

Energy delivered with such capacity shall be returned to BPA within 7 days of the date of delivery and shall be returned at times and rates of delivery agreed to by both the purchaser and BPA prior to delivery. BPA may agree to accept the return energy after the normal 7 day return period provided that such delay has been mutually agreed upon prior to delivery.

Section VI. Resource Cost Contribution

BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the CE–89 rate is 75.1 percent FBS and 24.9 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour.

Schedule NR–89 New Resource Firm Power Rate

Section I. Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest. New Resource Firm Power is available to investor-owned utilities (IOUs) under net requirements contracts for resale to ultimate consumers, direct consumption, or use in construction, test and start up, and station service. New Resource Firm Power also is available to any public body, cooperative, or Federal agency to the extent such power is needed to serve any New Large Single Load. In addition, BPA may make this rate available to those parties participating in exchange agreements that use this rate schedule as the basis for determining the amount or value of power to be exchanged. This schedule supersedes Schedule NR–87 which went into effect on an interim basis on October 1, 1987. Sales under this schedule are made subject to BPA's General Rate Schedule Provisions.

Section II. Rate

A. Demand Charge

1. $4.13 per kilowatt-month of billing demand occurring during all Peak Period hours.

2. No demand charge during Offpeak Period hours.

B. Energy Charge

1. 25.5 mills per kilowatthour of billing energy for the billing months September through March;

2. 21.2 mills per kilowatthour of billing energy for the billing months April through August;

Section III. Billing Factors

In this section billing factors are listed for computed requirements purchasers (section III.A) metered requirements purchasers, and those purchasers not covered by section III.A. (section 111.B.).

A. Computed Requirements Purchasers

Purchasers designated by BPA as computed requirements purchasers pursuant to power sales contracts shall be billed in accordance with the provisions of this section.

1. *Billing Demand.* The billing demand for actual, planned, and contracted computed requirements purchasers shall be the higher of the billing factors "a" and "b," below:

a. The lower of:

(1) The larger of the Computed Peak Requirement or the Computed Average Energy Requirement;

(2) The Measured Demand, before adjustment for power factor; or

b. The lower of:

(1) The Computed Peak Requirement; or

(2) 60 percent of the highest Computed Peak Requirement during the previous 11 billing months (Ratchet Demand).

2. *Billing Energy.* The billing energy for actual, planned, and contracted computed requirements purchasers shall be:

a. For the months September through March, the sum of:

(1) 56 percent of the Measured Energy, and

(2) 44 percent of the Computed Energy Maximum;

b. For the months April through August, the sum of:

(1) 39 percent of the Measured Energy, and .

(2) 61 percent of the Computed Energy Maximum.

B. Metered Requirements Purchasers and Other Purchasers Not Covered By Section III.A, Above

Purchasers designated as metered requirements customers and purchasers taking power under this rate schedule who are not otherwise covered by section III.A shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the Measured Demand as adjusted for power factor, unless otherwise specified in the power sales contract. However, purchasers who previously used the Firm Energy rate schedule, FE–2, either in the computation of their power bills or in the determination of the value of an exchange account, shall not be charged for demand under this rate schedule.

2. *Billing Energy.* The billing energy shall be the Measured Energy, unless otherwise specified in the power sales contract.

Section IV. Adjustments and Special Provisions

A. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

B. Cost Recovery Adjustment Clause

The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs shall be applied to all purchases and exchanges under this rate schedule. The percentage increase calculated in section III.C.5.c of the GRSPs shall be applied uniformly to the demand and energy charges contained in section II.A and II.B and the irrigation discount contained in section IV.C of this rate schedule. An additional increase of .046 mills per kilowatthour shall be made to the irrigation discount for each percentage increase in the NR rates due to the Cost Recovery Adjustment Clause.

C. Irrigation Discount

BPA shall apply an irrigation discount, equal to 4.6 mills per kilowatthour, to the charges for qualifying energy purchased under this rate schedule. The irrigation discount shall be applied after calculation of the Low Density Discount. The discount shall apply only to energy purchased during the billing months of April through October. Eligibility for the irrigation discount and reporting requirements shall be determined pursuant to section III.C.4 of the GRSPs.

D. Conservation Surcharge

The Conservation Surcharge shall be applied in accordance with section III.C.7 of the GRSPs and subsequent to any other rate adjustments.

E. Unauthorized Increase

BPA shall apply the charge for Unauthorized Increase to any purchaser of New Resource Firm Power taking demand and/or energy in excess of its contractual entitlement.

1. *Rate for Unauthorized Increase.* 67.3 mills per kilowatthour.

2. *Calculation of the Unauthorized Increase.* Each 60-minute clock-hour integrated or scheduled demand shall be considered separately in determining the amount which may be considered an unauthorized increase. BPA shall first determine the amount of unauthorized increase related to demand and shall then treat any remaining unauthorized increase as energy-related.

a. *Unauthorized Increase in Demand.* That portion of any Measured Demand during Peak Period hours, before adjustment for power factor, that exceeds the demand which the purchaser is contractually entitled to take during the billing month and that cannot be assigned:

(1) To a class of power which BPA delivers on such hour pursuant to contracts between BPA and the purchaser; or

(2) To a type of power which the purchaser acquires from sources other than BPA and which BPA delivers during such hour, shall be billed:

(1) In accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) If such exhibit does not apply or is not a part of the purchaser's power sales contract, at the rate for Unauthorized Increase, based on the amount of energy associated with the excess demand.

b. *Unauthorized Increase in Energy.* The amount of Measured Energy during a billing month that exceeds the amount of energy which the purchaser is contractually entitled to take during that month and that cannot be assigned:

(1) To a class of power that BPA delivers during such month pursuant to contracts between BPA and the purchaser; or

(2) To a type of power that the purchaser acquires from sources other than BPA and that BPA delivers during such month, shall be billed:

(1) In accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) As unauthorized increase if such exhibit does not apply or is not a part of the purchaser's power sales contract.

F. Coincidental Billing Adjustment

Purchasers of New Resource Firm Power who are billed on a coincidental basis and who have diversity charges or diversity factors specified in their power sales contracts shall have their charges for billing demand adjusted according to the provisions of section III.C.6 of the GRSPs. Computed requirements purchasers are not subject to the Coincidental Billing Adjustment for scheduled power.

G. Outage Credit

Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser for those hours for which BPA is unable to deliver the full billing demand during the billing month due to an outage on the facilities used by BPA to deliver New

Resource Firm Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

H. Energy Return Surcharge

Any purchaser who preschedules in accordance with sections 2(a)(4) and 2(c)(2) of Exhibit E of the Power Sales contract and who returns, during a single offpeak hour, more than 60 percent of the difference between that purchaser's estimated computed peak requirement and estimated computed average energy requirement for the billing month shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.49 mills per kilowatthour for the months of April through October, and
2. 1.48 mills per kilowatthour for the months of November through March.

Section V. Resource Cost Contribution

BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the NR–89 rate is 100.0 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour.

Schedule SP–89 Short-Term Surplus Firm Power Rate

Section I. Availability

This rate schedule is available for the purchase of Surplus Firm Power for the period ending September 30, 1994, including purchases under the Western Systems Power Pool (WSPP) agreements. BPA is not obligated to make power or energy available under this rate schedule if such power or energy would displace sales under the IP–89, VI–87, PF–89, or NR–89 rate schedules. Schedule SP–89 supersedes schedule SP–87 and associated GRSPs. except in the case of contracts for sales under schedule SP–87 which become effective on or before September 30, 1989. Sales under this schedule are made subject to BPA's General Rate Schedule Provisions.

Section II. Rate

A. Contract Rate

1. *Demand Charge.* a. For contracts that specify 12 months of service per year, $51.48 per kilowatt per year of Contract Demand billed monthly at the rate of $4.29 per kilowatt of Contract Demand occurring during all Peak Period hours in each billing month.

b. For contracts that specify service for fewer than 12 months per year, the monthly demand charge shall be assessed only for the specified service months at the rate of $4.29 per kilowatt of Billing Demand occurring during the Peak Period plus:

$$\frac{\$4.29\ (12\text{-specified service months})\ .25}{\text{specified service months}}$$

c. No demand charge during Offpeak Period hours.

2. *Energy Charge.* 24.3 mills per kilowatthour of Billing Energy.

B. Flexible Rate

Energy charges or demand and energy charges may be specified at a higher or lower average rate as mutually agreed by BPA and the purchaser. In no case shall the rate exceed 100 percent of the fixed and variable unit costs of generation and transmission of BPA's highest cost resource including exchange resources. No resource cost determination is needed for sales at less than or equal to the Contract rate.

C. Intertie Charge

Rates in sections II.A and II.B that equal or exceed the Contract rate shall be increased by the following charges for transactions over the Pacific Northwest-Pacific Southwest Intertie.

1. $.36 per kilowatt per month of billing demand and
2. 0.69 mills per kilowatthour of billing energy.

Rates in section II.B having an energy-only charge that equals or exceeds 30.2 mills per kilowatthour shall be increased by 1.4 mills per kilowatthour for transactions over the Pacific Northwest-Pacific Southwest Intertie.

Section III. Billing Factors

The billing factors shall be the Measured Demand and Measured Energy unless otherwise specified in the contract.

Section IV. Adjustments and Special Provisions

Power Factor Adjustment

The adjustment for power factor for BPA customers that are billed for Short-Term Surplus Firm Power on metered amounts, when specified in this rate schedule or in the contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand for energy by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

Section V. Resource Cost Contribution

BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the SP–89 rate is 99.3 percent Exchange and 0.7 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour.

Schedule NF–89 Nonfirm Energy Rate

Section I. Availability

This schedule is available for the purchase of nonfirm energy to be used both inside and outside the United States including sales under the Western Systems Power Pool (WSPP) agreements and sales to consumers. This schedule also applies to energy delivered for emergency use under the conditions set forth in section V.A of the General Rate Schedule Provisions (GRSPs). BPA is not obligated to offer nonfirm energy to any purchaser that results in displacement of firm power purchases under BPA's Power Sales Contracts. The offer of nonfirm energy under this schedule shall be determined by BPA. Schedule NF–89 supersedes Schedule NF–87 which went into effect on an interim basis on October 1, 1987. Sales under this schedule are made subject to BPA's General Rate Schedule Provisions.

Section II. Rates

The average cost of nonfirm energy is 18.0 mills per kilowatthour. The NF–89 rate schedule provides for upward and downward pricing flexibility from this average nonfirm energy cost. All rates and any subsequent adjustments contained in this rate schedule shall not exceed in total the NF Rate Cap defined in section IV.C of the GRSPs.

A. Standard Rate

The Standard rate is any offered rate not to exceed 21.6 mills per kilowatthour.

B. Market Expansion Rate

The Market Expansion rate is any offered rate below the Standard rate in effect. BPA may have one or more Market Expansion rates in effect simultaneously.

C. Incremental Rate

The Incremental rate is the Incremental Cost of energy plus 2.0 mills per kilowatthour, where the Incremental Cost is defined as all identifiable costs (expressed in mills per kilowatthour) that BPA would have avoided had it not produced or purchased the energy being sold under this rate.

D. Contract Rate

The Contract rate is 14.9 mills per kilowatthour of billing energy.

Section III. Adjustments to Rates

A. Guaranteed Delivery Surcharge

A surcharge of 2.0 mills per kilowatthour of billing energy is applied to guaranteed delivery of nonfirm energy under the Standard rate and Market Expansion rate.

B. Intertie Charge

Rate offers, under any of the rates specified above, greater than or equal to 18.0 mills per kilowatthour shall be increased by 1.4 mills per kilowatthour for nonfirm energy scheduled for delivery over the Pacific Northwest-Pacific Southwest Intertie.

Section IV. Billing Factors

The billing energy for nonfirm energy purchased under this rate schedule shall be the Measured Energy unless otherwise specified by contract.

Section V. Application and Eligibility

Any time that BPA has nonfirm energy for sale, the Standard rate, the Market Expansion rate, the Incremental rate, the Contract rate, or a combination of these rates may be in effect.

A. Standard Rate

The Standard rate:

1. Is available for all purchases of nonfirm energy; and

2. Applies to nonfirm energy purchased pursuant to the Relief from Overrun Exhibit to the power sales contract.

B. Market Expansion Rate

1. *Application of the Market Expansion rate.* The Market Expansion rate applies when BPA determines that all markets at the Standard rate have been satisfied and BPA offers additional nonfirm energy.

2. *Market Expansion Rate Qualification Criteria.* In order to purchase nonfirm energy at the Market Expansion rate, a purchaser must:

a. Have a displaceable resource, displaceable purchase of electricity, or

b. Be an end-user load with a displaceable alternative fuel source.

In addition, a purchaser must demonstrate one of the following:

a. Shutdown or reduction of the output of the displaceable resource in an amount equal to the amount of Market Expansion rate energy purchased; or

b. Reduction of a displaceable purchase and the output of the resource associated with that purchase, in an amount equal to the amount of Market Expansion rate energy purchased; or

c. Shutdown or reduction of the identified output of the resource(s) indirectly in an amount equal to the amount of Market Expansion rate energy purchased (for example, the purchase may be used to run a pumped storage unit); or

d. Decrease of an end-user alternate fuel source in an amount equivalent to the amount of Market Expansion rate energy purchased.

3. *Eligibility Criteria for Market Expansion rate.* a. When only one Market Expansion rate is offered:

Purchasers qualifying under section V.B.2. who purchased nonfirm energy directly from BPA are eligible to purchase power under the Market Expansion rate offered if the decremental cost of the qualifying resource, purchase, or qualifying alternative fuel source is lower than the Standard rate in effect plus 2.0 mills per kilowatthour.

Purchasers qualifying under section V.B.2. who purchase nonfirm energy through a third party are eligible to purchase power under the Market Expansion rate offered if the cost of the qualifying alternative fuel source is lower than the Standard rate in effect plus 4.0 mills per kilowatthour.

b. When more than one Market Expansion rates are offered:

Purchasers qualifying under section V.B.2. who purchase nonfirm energy directly from BPA are eligible to purchase power under the Market Expansion rate if the decremental cost of the qualifying resource, purchase, or qualifying alternative fuel source is lower than the Standard rate in effect plus 2.0 mills per kilowatthour. The rate applicable to a purchaser shall be the highest Market Expansion rate offered that is below the purchaser's qualifying decremental cost minus 2.0 mills per kilowatthour.

Purchasers qualifying under section V.B.2. who purchase nonfirm energy through a third party are eligible to purchase power under the Market Expansion rate if the decremental cost of the qualifying alternative fuel source is lower than the Standard rate plus 4.0 mills per kilowatthour. The rate applicable to a purchaser shall be the highest Market Expansion rate offered that is below purchaser's qualifying decremental cost minus 4.0 mills per kilowatthour.

C. Incremental Rate

The Incremental rate applies to sales of energy:

1. That is produced or purchased by BPA concurrently with the nonfirm energy sale;

2. That BPA may at its option not produce or purchase; and

3. That has an Incremental Cost greater than the Standard rate (plus the Intertie Charge, if applicable) less 2.0 mills per kilowatthour.

D. Contract Rate

The Contract rate applies to contracts (except power sales contracts offered pursuant to sections 5(b). 5(c), and 5(g) of the Northwest Power Act) that refer to the Contract rate:

1. For the sale of nonfirm energy; or

2. For determining the value of energy.

E. Western Systems Power Pool Transactions

BPA may make available nonfirm energy for transactions under the Western Systems Power Pool (WSPP) agreement. WSPP sales shall be subject to the terms and conditions specified in the WSPP agreement and shall be consistent with regional and public preference. The rate for transactions under the WSPP agreement is any rate within the limits specified by the Standard, Market Expansion, and Incremental rates but may differ from the actual rate offered for non-WSPP transactions in any hour. The rate for WSPP transactions is independent of any other rate offered concurrently under this rate schedule outside that agreement.

F. End-User Rate

BPA may agree to a rate or rate formula for nonfirm energy purchases by end-users. Such rate or rate formula shall be within the limits specified for the Standard and Market Expansion rates but may differ from the actual rates offered during any hour.

Section VI. Delivery

A. Rate of Delivery

BPA shall determine the amount of nonfirm energy to be made available for each hour. Such determination shall be

made for each applicable nonfirm energy rate.

B. Guaranteed Delivery

1. *Availability.* BPA will determine the amount and duration of nonfirm energy to be offered on a guaranteed basis. Such daily or hourly amounts may be as small as zero or as much as all the nonfirm energy that BPA plans to offer for sale on such days.

2. *Conditions.* Scheduled amounts of guaranteed nonfirm energy may not be changed except:

a. When BPA and the purchaser mutually agree to increase or decrease the scheduled amounts; or

b. When BPA must reduce nonfirm energy deliveries in order to serve firm loads because of unexpected generation or transmission losses.

Section VII. Resource Cost Contribution

BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the average cost of nonfirm energy is 99.6 percent FBS and 0.4 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour.

Schedule SS–89 Share-The-Savings Rate

Section I. Availability

This rate schedule is available for the contract purchase of Nonfirm Energy under an experimental rate and is limited to the term of the rate experiment. Nonfirm Energy will be made available under this rate schedule for use both inside and outside the United States for the displacement of a qualifying resource, displaceable purchase of electricity, or end-user load that can be served with alternate fuel sources. This rate schedule is only available to purchasers who execute a contract with BPA specifying use of the Share-the-Savings Rate. BPA is not obligated to offer Nonfirm Energy to any purchaser that results in displacement of firm power purchases under BPA's Power Sales Contracts. Schedule SS–89 supersedes Schedule SS–87 which went into effect on an interim basis on October 1, 1987. Sales under this schedule are made subject to BPA's General Rate Schedule Provisions.

Section II. Rate

The rate shall be a formula rate based solely or in part on decremental cost information submitted by the purchaser. The rate formula and decremental cost, for purposes of establishing charges under this rate schedule, shall be defined in the applicable contract. The rate formula agreed upon by BPA and the purchaser shall in no event result in a rate higher than the NF Rate Cap defined in section IV.C. of the GRSPs or lower than 1 mill per kilowatthour.

Section III. Billing Factors

The billing energy for Nonfirm Energy purchased under this rate schedule shall be the Measured Energy unless otherwise specified in the Share-the-Savings Rate contract.

Section IV. Application and Eligibility

A. General Requirements

In order to purchase Nonfirm Energy under the Share-the-Savings Rate, the purchaser must:

1. Have executed a contract specifying application of the Share-the-Savings Rate Schedule.

2. Have a displaceable resource, displaceable purchase of electricity, or be an end-user load with a displaceable alternate fuel source. End-user loads with alternate fuel sources may not use the Decremental Cost of a displaceable purchase of electricity to qualify for this rate.

B. BPA Service Priority

Offers of Nonfirm Energy under this rate schedule shall be made pursuant to the terms and conditions set forth in the Share-the-Savings rate contract. BPA will sell Nonfirm Energy under this rate schedule consistent with regional and public preference.

Section V. Resource Cost Contribution

BPA has made the following determinations:

A. The SS–89 rate is not based on the cost of BPA resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour.

Schedule RP–89 Reserve Power Rate

Section I. Availability

This schedule is available for the purchase of power:

A. In cases where a purchaser's power sales contract states that the rate for Reserve Power shall be applied;

B. For which BPA determines no other rate schedule is applicable; and

C. To serve a purchaser's firm power load in circumstances where BPA does not have a power sales contract in force with such purchaser, and BPA determines that this rate should be applied.

This rate schedule may be applied to power purchased by entities outside the United States. This rate schedule supersedes Schedule RP–87 which went into effect on an interim basis on October 1. 1987. Sales under this schedule are made subject to BPA's General Rate Schedule Provisions.

Section II. Rate

A. Demand Charge

1. $3.64 per kilowatt of billing demand occurring during all Peak Period hours.

2. No demand charge during Offpeak Period hours.

B. Energy Charge

25.3 mills per kilowatthour of billing energy.

Section III. Billing Factors

The factors to be used in determining the billing for power purchased under this rate schedule are as follows:

A. Billing Demand

If applicable, the billing demand shall be the Contract Demand as specified in the power sales contract. Otherwise the billing demand shall be the Measured Demand as adjusted for power factor.

B. Billing Energy

The billing energy shall be the Contract Demand multiplied by the number of hours in the billing month, if use of the Contract Demand for determining billing energy is specified in the power sales contract. Otherwise the billing energy for such purchasers shall be the Measured Energy.

Section IV. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

Section V. Resource Cost Contribution

BPA has made the following determinations:

A. The RP–89 rate is not based on the cost of resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour.

Outline for General Rate Schedule Provisions

Section I. Adoption of Revised Rate Schedules and General Rate Schedule Provisions

A. Approval of Rates

These 1989 rate schedules and General Rate Schedule Provisions (GRSPs) shall become effective upon interim approval or final confirmation and approval by the Federal Energy Regulatory Commission (FERC). BPA will request FERC approval effective October 1, 1989. BPA proposes that the following schedules, and the GRSPs associated with these schedules, be effective for 2 years: PF–89, IP–89, SI–89, CE–89, CF–89, NR–89, SS–89, SP–89, NF–89, and RP–89. The VI–87 rate schedule reflects adjustments of and supplements to the rate schedule VI–86 and associated GRSPs (which are to be in effect for 7 years). Sections III.A and VI.J of the VI–87 rate schedule are to be in effect for an additional 2 years. BPA proposes that rate schedule SI–89 be effective 2 years, except for the Special Industrial Offpeak rate provision, which is to remain in effect through June 30, 1990, pursuant to an Amendatory Agreement between BPA and Hanna Nickel Smelting Company executed July 1, 1985. BPA proposes that the SP–89 rate schedule, and the GRSPs associated with this schedule, be effective for 5 years.

B. General Provisions

These 1989 rate schedules, and the GRSPs associated with these rate schedules, supersede BPA's 1987 rate schedules (which became effective October 1, 1987) to the extent stated in the Availability section of each 1989 rate schedule. These schedules and GRSPs shall be applicable to all BPA contracts, including contracts executed both prior to and subsequent to enactment of the Northwest Power Act. All sales of power made under these rate schedules are subject to the following acts as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Northwest Power Act.

Section II. Types of BPA Service

A. Priority Firm Power

Priority Firm Power is electric power (capacity, energy, or capacity and energy) that BPA will make continuously available for resale to ultimate consumers, or for direct consumption, construction, test and start-up, and station service by public bodies, cooperatives, and Federal agencies. (Construction, test and start-up, and station service are defined in section V.B of these GRSPs.)

Utilities participating in the exchange under section 5(c) of the Northwest Power Act may purchase Priority Firm

Power pursuant to their Residential Purchase and Sale Agreements.

In addition, BPA may make Priority Firm Power available to those parties participating in exchange agreements specifying use of the Priority Firm rate for determining the amount or value of power to be exchanged.

Power purchased under the power rate schedule is to be used to meet the purchaser's actual firm load within the Pacific Northwest. Such power may be restricted in accordance with the Restriction of Deliveries section of these GRSPs (section V.E). However, BPA shall not restrict Priority Firm Power until Industrial Firm Power has been restricted in accordance with the provisions of section II.C of these GRSPs.

Priority Firm Power is not available to serve New Large Single Loads.

B. New Resource Firm Power

New Resource Firm Power is electric power (capacity, energy, or capacity and energy) that BPA will make continuously available:

1. For any New Large Single Load,
2. For firm power purchased by investor-owned utilities pursuant to power sales contracts with BPA, and
3. For construction, test and start-up, and station service for facilities owned or operated by investor-owned utilities.

New Resource Firm Power is to be used to meet the purchaser's actual firm load within the Pacific Northwest. Such power may be restricted in accordance with the Restriction of Deliveries section of these GRSPs (section V.E). However, BPA shall not restrict New Resource Firm Power until Industrial Firm Power has been restricted in accordance with the provisions of section II.C of these GRSPs.

C. Industrial Firm Power

Industrial Firm Power is electric power that BPA will make continuously available to a direct-service industrial (DSI) purchaser pursuant to the DSI's power sales contract and subject to: 1. The restriction applicable to deliveries of all firm power pursuant to the Uncontrollable Forces and Continuity of Service provisions of the General Contract Provisions of the power sales contract, and, 2. The restrictions given in the Restriction of Deliveries section of the power sales contract.

D. Special Industrial Power

Special Industrial Power is electric power which BPA will make continuously available to any DSI that qualifies for the Special Industrial Power rate pursuant to section 7(d)(2) of the Northwest Power Act. This power is similar in nature to Industrial Firm Power, but is subject to greater restriction by BPA. Special Industrial Power is made available to the qualifying DSI upon adoption of, and subject to, an amendment modifying its power sales contract.

E. Auxiliary Power

Auxiliary Power is that power which a DSI requests and which BPA agrees to make available to serve that portion of the DSI's load which is in excess of the DSI's Operating Demand for Industrial Firm Power or Special Industrial Power.

F. Firm Capacity

Firm Capacity is capacity that BPA assures will be available in the amount(s) and during the period(s) specified in the power sales contract. The energy associated with this capacity must be returned to BPA. Firm Capacity may be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section V.E).

G. Surplus Firm Power

Surplus Firm Power is firm energy, firm power (firm energy with capacity), and firm capacity (capacity with energy return requirements) in excess of the amount required to meet BPA's existing contractual obligations to provide firm service. Surplus Firm Power may be used either for resale or direct consumption by purchasers both inside and outside the United States. Such power, however, may be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section V.E).

H. Nonfirm Energy

Nonfirm Energy is supplied or made available by BPA to a purchaser under an arrangement that does not have the guaranteed continuous availability feature of firm power. Nonfirm energy is mostly sold under the Nonfirm Energy rate schedule, NF-89. Nonfirm energy also may be supplied under the Share-the-Savings rate schedule, SS-89, which is available as an experimental rate for contract purchase.

In addition, BPA also can make nonfirm energy available under the Nonfirm Energy rate schedule to the Western Systems Power Pool (WSPP) subject to terms and conditions agreed upon by the members participating in the WSPP and in accordance with BPA policy for such arrangements.

However, Nonfirm Energy that has been purchased under a guarantee provision in the Nonfirm Energy rate schedule shall be provided to the purchaser in accordance with the provisions of that schedule and the power sales contract if applicable. BPA may make Nonfirm Energy available to purchasers both inside and outside the United States.

I. Reserve Power

Reserve Power is firm power sold to a purchaser: 1. In cases where the purchaser's power sales contract states that the rate for Reserve Power shall be applied; 2. To provide service when no other type of power is deemed applicable; and 3. To serve the purchaser's firm power loads under circumstances where BPA does not have a power sales contract in force with the purchaser.

Sales of Reserve Power are subject to the Restriction of Deliveries section of these GRSPs (section V.E).

Section III. Billing Factors and Billing Adjustments

A. Billing Factors for Demand

1. Measured Demand

The purchaser's Measured Demand shall be determined in the manner described in this section. Measured Demand shall be that portion of the metered or scheduled demand that is purchased from BPA under the applicable rate schedule. For those contracts to which BPA is a party and that provide for delivery of more than one class of electric power to the purchaser at any point of delivery, the portion of each 60-minute clock-hour integrated demand assigned to any class of power shall be determined pursuant to the power sales contract. The portion of the total Measured Demand so assigned shall constitute the Measured Demand for each such class of power.

The Measured Demand shall be determined from the metered demand or the scheduled demand, as hereinafter defined. The Measured Demand shall be determined on either a coincidental or a noncoincidental basis, as provided in the purchaser's power sales contract.

a. *Metered Demand.* The metered demand in kilowatts shall be the largest of the 60-minute clock-hour integrated demands, adjusted as specified in the power sales contract, at which electric energy is delivered to a purchaser: (1) At each point of delivery for which the metered demand is the basis for determination of the Measured Demand. (2) During each time period specified in the applicable rate schedule, and,

(3) During any billing period.

Such largest integrated demand shall be determined from measurements made either in the manner specified in the power sales contract or as provided in section VI.A herein. In determining the metered demand, BPA shall exclude any

abnormal integrated demands due to or resulting from:

(1) Emergencies or breakdowns on, or maintenance of, the Federal system facilities, and

(2) Emergencies on the purchaser's facilities, provided that such facilities have been adequately maintained and prudently operated, as determined by BPA.

b. *Scheduled Demand.* The scheduled demand in kilowatts shall be the largest of the hourly demands at which electric energy is scheduled for delivery to a purchaser:

(1) To each system for which scheduled demand is the basis for determination of the Measured Demand,

(2) During each time period specified in the applicable rate schedule, and

(3) During any billing period.

Scheduled amounts are deemed delivered for the purpose of determining billing demand.

2. Ratchet Demand

The Ratchet Demand in kilowatts shall be the maximum demand established during a specified period of time either during or prior to the current billing period. The demand on which the ratchet is based is specified in the relevant rate schedule or in these GRSPs. For utilities purchasing under the PF or NR rate schedules, the Ratchet Demand is based on the highest demand during prior billing months. When the Ratchet Demand is used as a billing factor, BPA shall have specified in the appropriate schedules or GRSPs:

a. The period of time over which the ratchet shall be calculated,

b. The type of demand to be used in the calculation, and

c. The percentage (if any) of that demand which will be used to calculate the Ratchet Demand.

3. Contract Demand

The Contract Demand shall be the maximum number of kilowatts that the purchaser agrees to purchase and BPA agrees to make available, subject to any limitations included in the power sales contract. BPA may agree to make deliveries at a rate in excess of the Contract Demand at the request of the purchaser, but shall not be obligated to continue such excess deliveries. Any contractual or other reference to Contract Demand as expressed in kilowatthours shall be deemed, for the purpose of these GRSPs, to refer to the term "Contract Energy."

4. Computed Peak Requirement

For purchasers designated to purchase on the basis of computed requirements, the Computed Peak Requirement shall be determined as specified in the purchaser's power sales contract. That specification is provided in:

a. Sections 16, 17(c), and 17(f), as adjusted by other sections of the contract, for actual computed requirements purchasers;

b. Sections 16, 17(a), and 17(f), as adjusted by other sections of the contract, for planned computed requirements purchasers; and

c. Sections 16 and 17(b), as adjusted by other sections of the contract, for contracted computed requirements purchasers.

5. Computed Average Energy Requirement

For computed requirements purchasers, the Computed Average Energy Requirement shall be determined as specified in the purchaser's power sales contract. That specification is provided in:

a. Sections 16, 17(c), and 17(f), as adjusted by other sections of the contract, for actual computed requirements purchasers;

b. Sections 16, 17(a), and 17(f), as adjusted by other sections of the contract, for planned computed requirements purchasers; and

c. Sections 16 and 17(b), as adjusted by other sections of the contract, for contracted computed requirements purchasers.

6. Operating Demand

The Operating Demand is that demand which is established by each DSI in accordance with section 5(b) of the DSI's power sales contract. Unless the DSI has requested, and BPA has granted, an Auxiliary Demand, the Operating Demand establishes a limit with respect to:

a. The demand which the purchaser may impose on BPA; and

b. The total amount of energy during a billing month which the DSI is entitled to purchase from BPA.

7. Curtailed Demand

A Curtailed Demand is the number of kilowatts of industrial power (Industrial Firm Power or Special Industrial Power) during the billing month which results from the DSI's request for such power in amounts less than the Operating Demand therefor. Each purchaser of industrial power may curtail its demand according to the terms of its power sales contract (which permits up to three levels of Curtailed Demand each month).

8. Restricted Demand

Restricted Demand is the number of kilowatts of industrial power (either Industrial Firm Power or Special Industrial Power) that results when BPA has restricted delivery of such power for one clock-hour or more. BPA shall make such restrictions according to the terms of the DSI's power sales contract. In a given billing month, there are as many possible levels of Restricted Demand for a DSI as there are number of restrictions.

9. Auxiliary Demand

Auxiliary Demand is the number of kilowatts of Auxiliary Power that a DSI requests and that BPA agrees to make available to serve a portion of the DSI's load during the period specified in the DSI's request. The DSI may request up to three levels of Auxiliary Demand during a billing month.

If BPA agrees to a request for Auxiliary Power but later becomes unable to supply such demand, the Restricted Demand for Auxiliary Power is deemed to be the Auxiliary Demand for such period of restriction. Auxiliary Power may be curtailed by the DSI according to the provisions of section 9(a) of the DSI's power sales contract.

BPA shall make Auxiliary Power available to Industrial Firm Power purchasers under the Industrial Firm Power Rate Schedule at the Standard Industrial Rate. Auxiliary Power sales to DSIs electing to purchase under the Variable Industrial Power Rate Schedule (VI–87) shall be made at the rate determined pursuant to section III of the VI–87 rate schedule. Auxiliary Power sales to DSIs purchasing under the Special Industrial Rate will be made only at the Standard Special Industrial Power Rate.

10. BPA Operating Level

The BPA Operating Level is, for the purpose of these rate schedules and GRSPs, an hourly amount of industrial power (Industrial Firm Power or Special Industrial Power) for a DSI that is equal to the lowest of the following demands during that hour:

a. Operating Demand plus Auxiliary Demand, if any;

b. Curtailed Demand; or

c. Restricted Demand.

The weighted average BPA Operating Level for each DSI can be determined by summing the hourly BPA Operating Levels and dividing by the number of hours in the billing month.

Each DSI must request service from BPA for each billing month in accordance with the terms of the power sales contract. The requested level of service will be the BPA Operating Level, provided BPA does not need to restrict the DSI and provided BPA agrees to supply any requested Auxiliary

Demand. Each requested level of service may include a designation for both the Peak Period and the Offpeak Period. A DSI may request and BPA may agree to a level of service for the Offpeak Periods other than that in the Peak Period. If a DSI does not separately designate a requested level of service for the Peak and Offpeak Periods, the BPA Operating Level is the basis for determining if a DSI has incurred an unauthorized increase.

Any DSI whose Measured Demand, before adjustment for power factor, during any 1 hour exceeds the BPA Operating Level for that hour shall be subject to unauthorized increase charges for each kilowatthour of unauthorized increase associated with each overrun.

Only the BPA Operating Level applicable during the Peak Period will be used in determining the Billing Demand for power purchased under the Industrial Firm Power rate schedule, the Variable Industrial Power rate schedule, and the Standard Rate under the Special Industrial rate schedule. During the Peak Period the BPA Operating Level may be no greater than the Operating Demand for the billing month unless the customer has requested, and BPA has agreed to supply, the Auxiliary Demand.

B. Billing Factors for Energy

1. Measured Energy

Measured Energy shall be that portion of the metered or scheduled energy that is purchased from BPA under the applicable rate schedule. For those contracts to which BPA is a party and that provide for delivery of more than one class of electric power to the purchaser at any point of delivery, the portion of each 60-minute clock-hour integrated demand assigned to any class of power shall be determined pursuant to the power sales contract. The sum of the portions of the demands so assigned shall constitute the Measured Energy for each such class of power.

The Measured Energy shall be determined from the metered energy or the scheduled energy, as hereinafter defined.

a. *Metered Energy.* The metered energy for a purchaser shall be the number of kilowatthours that are recorded on the appropriate metering equipment, adjusted as specified in the power sales contract, and delivered to a purchaser:

(1) At all points of delivery for which metered energy is the basis for determination of the Measured Energy, and

(2) During any billing period.

The metered energy shall be determined from measurements made either in the manner specified in the power sales contract or as provided in section VI.A herein.

b. *Scheduled Energy.* The scheduled energy in kilowatthours shall be the sum of the hourly demands at which electric energy is scheduled for delivery to a purchaser:

(1) For each system for which scheduled energy is the basis for determination of the Measured Energy, and

(2) During any billing period.

Scheduled amounts are deemed delivered for the purpose of determining billing energy.

2. Computed Energy Maximum

The Computed Energy Maximum equals the product of the number of hours in the billing month and the Computed Average Energy Requirement.

3. Contract Energy

The Contract Energy shall be the maximum number of kilowatthours that the purchaser agrees to purchase and BPA agrees to make available, subject to any limitations included in the power sales contract.

C. Billing Adjustments

1. Power Factor Adjustment

The formula for determining average power factor is as follows:

$$\text{Average power factor} = \frac{\text{Kilowatthours}}{\sqrt{(\text{Kilowatthours})^2 + (\text{Reactive kilovoltamperehours})^2}}$$

The data used in the above formula shall be obtained from meters that are ratcheted to prevent reverse registration. These data then shall be adjusted for losses, if applicable, before determination of the average power factor.

When deliveries to a purchaser at any point of delivery either:

a. Include more than one class of power, or

b. Are provided under more than one rate schedule and it is impracticable to meter the kilowatthours and reactive kilovoltamperehours for each class or rate schedule separately, the average power factor of the total deliveries for the month will be used, where applicable, as the power factor for all power delivered to such point of delivery.

To maintain acceptable operating conditions on the Federal system, BPA may, unless specifically otherwise agreed, restrict deliveries of power to a purchaser with a low power factor. Such restriction may be made to a point of delivery or to a purchaser's system at any time that the average leading power factor or average lagging power factor for all classes of power delivered to such point or to such system is below 75 percent.

2. Outage Credit

To the extent that BPA is unable to provide full service to a purchaser during the billing month as a result of interruptions in service due to reasons cited in the General Contract Provisions, BPA shall adjust the charges for those hours for billing demand for such purchaser to reflect BPA's inability to provide full service, provided such adjustment is mandated by the purchaser's power sales contract. The adjustment is provided on a point of delivery basis. To compute the adjustment for noncoincidentally billed systems, BPA shall determine the monthly demand charge(s) for the point(s) of delivery where the outage(s) occurred, multiply by the number of hours of outage, and divide by the total number of hours in the billing month. For coincidentally billed points of delivery, the adjustment shall apply only to those points of delivery at which BPA was unable to provide full service. For partial outages (such as an outage on one feeder in a substation with several feeders), BPA shall determine an equivalent interruption in order to arrive at the number of hours to be used in the calculation of the credit.

3. Low Density Discount (LDD)

a. *Basic LDD Principles.* A predetermined discount shall be applied each billing month to the charges for all power purchased under the Priority Firm Power rate schedule by eligible purchasers as defined in section b, below. The discount shall be calculated on an annual basis and shall become

effective with the first billing period in the calendar year. Retroactive billing for the LDD may be required if the data are not available by the January billing date. The level of the discount shall be determined from the following ratios:

(1) The purchaser's total electric energy requirements during the previous calendar year (the purchaser's firm sales, nonfirm sales to firm retail loads, sales for resale, and associated losses, but excluding nonfirm sales to nonfirm retail loads, such as boiler loads served under BPA's alternate fuel policy) divided by the value of the purchaser's depreciated electric plant (excluding generation plant) at the end of such year, and

(2) The average number of consumers (annual and seasonal consumers with residential, industrial, commercial, and irrigation accounts, but excluding separately billed services for water heating, electric space heating, and security lights) during the previous calendar year divided by the number of pole miles of distribution line at the end of such year. Distribution lines are defined as those that deliver electric energy from a substation or metering point, at a voltage of 34.5 kV or less, to the point of attachment to the consumer's wiring and include primary, secondary, and service facilities.

These calculations shall be based on data provided in the purchaser's annual financial and operating report. In calculating these ratios, BPA shall use data pertaining to the purchaser's entire electric utility system within the region. Results of the calculations shall not be rounded.

Customers who have not provided BPA with all four requisite pieces of annual data (see a.(1) and a.(2) above) by June 30 of each year shall be declared ineligible for the LDD effective with the June billing period for that year. BPA shall extend a customer's eligibility from the previous year through the June billing period of the following year and shall make any necessary retroactive adjustments once the new data have been processed. If no data have been received by December 31 for the previous calendar year, BPA shall assume that the utility did not qualify for an LDD for that year. Low Density Discounts issued from January 1 to June 30 shall be assumed to have been in error, and the utility shall be billed for any such discounts issued.

Revisions to the data used to calculate the amount of the LDD may be made by the purchaser for a period of up to 2 years from the first day to which the data apply. However, such revisions shall not apply to periods when the customer was ineligible for a discount due to late data submission.

b. *Eligibility Criteria.* To qualify for a discount, the purchaser must meet all six of the following eligibility criteria:

(1) The purchaser must serve as an electric utility offering power for resale;

(2) The purchaser must agree to pass the benefits of the discount through to the purchaser's consumers within the region served by BPA;

(3) The purchaser's average retail rate for the reporting year must exceed the average Priority Firm Power rate in effect for the qualifying period by 10 percent. For CY 1989, the average Priority Firm Power rate shall be the average of the PF–87 Preference rate for 9 months and the PF–89 Preference rate for 3 months. For CY 1990, the average Priority Firm Power rate shall be the PF–89 Preference rate;

(4) The purchaser's kilowatthour-to investment ratio (Ratio 3.a.(1)) must be less than 100;

(5) The purchaser's consumers-per-mile ratio (Ratio 3.a.(2)) must be less than 12; and

(6) The purchaser must qualify for a discount based on the criteria in section c, below.

c. *Discounts.* The purchaser shall be awarded the greatest discount for which that purchaser qualifies. The discounts and the qualifying criteria for those discounts are listed below.

(1) Three percent, for any purchaser for whom:

(a) The kilowatthour-to-investment ratio is equal to or greater than 25 but less than 35; or

(b) The consumers-per-mile ratio is equal to or greater than 5 but less than 7.

(2) Five percent, for any purchaser for whom:

(a) The kilowatthour-to-investment ratio is equal to or greater than 15 but less than 25; or

(b) The consumers-per-mile ratio is equal to or greater than 3 but less than 5.

(3) Seven percent, for any purchaser for whom:

(a) The kilowatthour-to-investment ratio is less than 15; or

(b) The consumers-per-mile ratio is less than 3.

4. Irrigation Discount

a. *Basic Irrigation Discount Principles.* A discount of 4.6 mills per kilowatthour shall be applied to the charges for qualifying irrigation energy purchased under the Priority Firm Power and New Resource Firm Power rate schedules, during the billing months of April through October. This discount shall be applied subsequent to calculation of the Low Density Discount, if applicable. Any energy on which the irrigation discount is claimed shall be metered separately by the Purchaser, and used exclusively for agricultural irrigation or drainage pumping.

b. *Qualifying Energy Purchases.* The qualifying irrigation energy shall be determined as follows:

(1) All irrigation energy must be used exclusively for the purpose of irrigation and drainage pumping on agricultural land and be measured at the end-use irrigation customer's meter. The discount shall apply to the measured energy sales at the end-use.

(2) Energy subject to the discount must be purchased during the billing months of April through October.

(3) Purchasers of exchange energy under the Residential Purchase and Sale Agreement (RPSA) are eligible for the irrigation discount for the portion of their irrigation sales qualifying for the exchange under the RPSA contracts.

(4) General requirements customers are eligible for an irrigation discount for a portion of their irrigation sales equal to the share of their total sales served by BPA firm purchases (i.e., total irrigation and drainage pumping sales multiplied by BPA billing energy for Priority Firm or New Resources firm purchases divided by the total firm utility system requirements for the billing month).

c. *Initial Reporting Requirements.* Requests for the Irrigation Discount must include the following information:

(1) To receive an irrigation discount, a purchaser must file a request for the discount with its local BPA Area or District office by April 1 each year.

(2) In the request, the purchaser must certify that the irrigation energy is sold exclusively for use in irrigation and drainage pumping on agricultural land and that the discount is passed, in its entirety, to the irrigation consumer, regardless of whether the utility has raised its rates. BPA retains the right to verify, in a manner satisfactory to the Administrator, that the discounted energy is used for the sole benefit of the purchaser's irrigation load.

d. *Annual Reporting Requirements.* Purchasers shall submit an annual irrigation report to their local BPA Area or District office in order to receive the irrigation discount. Purchasers are required to report information related to monthly irrigation energy sales. If a utility does not read its irrigation meters monthly, the utility must estimate its monthly irrigation sales. These estimates shall be reviewed by BPA area and/or district offices. Purchasers must read their meters within 3 working days of the beginning and ending of the irrigation discount period (April–October). In order to qualify for the

discount, the purchaser must submit all data to BPA by December 31 of the calendar year in which the sales occurred. Irrigation reports to BPA shall include the following monthly information for the reporting period:

(1) Utility name and period for which the report is being made;

(2) Total irrigation sales and total qualifying irrigation energy sales (in kilowatthours) by month;

(3) Total qualifying irrigation sales (in kilowatthours) by month under 400 horsepower, for exchanging utilities;

(4) Total utility firm system requirements for other than full requirement customers by month (in kilowatthours);

(5) Total energy purchased from BPA under the Priority Firm or New Resource rate by month in kilowatthours; and

(6) The Purchaser shall list each irrigation and drainage account number in its annual report and whether each irrigation consumer is billed monthly, bimonthly, or seasonally. If the Purchaser is an exchanging utility, the Purchaser shall also identify the size (in horsepower) of the connected load for each active account. A utility may submit monthly reports, if it chooses. In that case, the active list of accounts should be included in the last monthly report submitted.

5. Cost Recovery Adjustment Clause

a. *Applicable Rate Schedules.* The Cost Recovery Adjustment Clause (CRAC) applies to the 1989 Priority Firm Power (Exchange and Preference), Industrial Firm Power, Variable Industrial Power, Firm Capacity, and New Resource Firm Power rate schedules. A percentage adjustment, labeled as CRAC%, is calculated for specific periods and applied to these rates by various formulas.

b. *Evaluation and Adjustment Periods.* There are two evaluation and adjustment periods for the Cost Recovery Adjustment Clause.

(1) *Period 1.* Period 1 is comprised of an evaluation period covering FY 1989 (October 1, 1988 through September 30, 1989) and an adjustment period of January 1, 1990 through September 30, 1990.

After September 30, 1989, BPA shall evaluate its preliminary, unaudited financial position by measuring its FY 1989 net revenues (BPA's total FY 1989 revenues less FY 1989 expenses.)

Any resulting rate adjustment shall be at the Administrator's discretion, shall be upward only, and shall not be greater than 10.0 percent.

If the net revenues are less than zero for the evaluation period (FY 1989) as specified herein, BPA may adjust the applicable rates (PF–89, IP–89, VI–87, CF–89, and NR–89) upward over an adjustment period beginning January 1, 1990, and ending September 30, 1990.

(2) *Period 2.* Period 2 is comprised of an evaluation period covering FY 1990 and an adjustment period of January 1, 1991, through September 30, 1991.

Any resulting rate adjustment shall be at the Administrator's discretion, shall be upward only, and shall not be greater than 10.0 percent.

After September 30, 1990, BPA shall evaluate its preliminary, unaudited financial position by measuring its FY 1990 net revenues (BPA's total FY 1990 revenues less FY 1990 expenses). The amount of any CRAC adjustment resulting from Period 1 evaluation shall be subtracted from FY 1990 revenues to obtain the adjusted FY 1990 net revenues. If adjusted FY 1990 net revenues are less than zero for Period 2, BPA may adjust the applicable rates (PF–89, IP–89, VI–87, CF–89, and NR–89) upward over an adjustment period beginning January 1, 1991, and ending September 30, 1991.

c. *Formulas for the Cost Recovery Adjustment Clause.* (1) *Adjustment Calculation.* BPA shall determine the net revenue for each evaluation period using the following formulas:

(a) *Period 1:*

NR1=revenues−expenses

where:

revenues=total operating revenues (in millions of dollars) from the FCRPS Statements of Revenues and Expenses;

expenses=sum of total operating expenses, net interest expense, and any litigation settlement expenses or other extraordinary expenses shown separately on the FCRPS Statements of Revenues and Expenses (in millions of dollars);

NR1=FY 1989 net revenues (in millions of dollars).

If NR1 is zero or greater, then there will be no rate adjustment; and

CR1=zero

If NR1 is less than zero:

CR1=absolute value of NR1, and is the cost recovery for Period 1.

The following formulas apply for the calculation of the percent that the Cost Recovery Adjustment Clause could increase the applicable rates during January 1, 1990, through September 30, 1990:

(i) If CR1 is greater than $29.6 million, then the CRAC% equals the lesser of:

(A) (CR1+11.571)/13.721; or

(B) 10.0 percent.

(ii) If CR1 is less than or equal to $29.6 million, then, for PF, CF, and NR rate schedules (IP and VI are not adjusted):

CRAC%=CR1/9.859

(b) *Period 2:*

NR2=(revenues-ACR1)−expenses

where:

NR2=Adjusted FY 1990 net revenues (in millions of dollars); and

ACR1=The lesser of CR1 or $125.6 million, or zero if rates were not adjusted as a result of a CRAC adjustment in Period 1.

If NR2 is zero or greater, then there will be no rate adjustment.

If NR2 is less than zero, then:

CR2=absolute value of NR2, and is the cost recovery for Period 2.

The following formulas apply for the calculation of the percent that the Cost Recovery Adjustment Clause could increase the applicable rates during January 1, 1991, through September 30, 1991:

(i) If CR2 is greater than $32.8 million, then the CRAC% equals the lesser of:

(A) (CR2+11.833)/14.876; or

(B) 10.0 percent.

(ii) If CR2 is less than or equal to $32.8 million, then, for PF, CF, and NR rate schedules (IP and VI are not adjusted):

CRAC%=CR2/10.936

d. *Application to Irrigation Discount.* In addition to the direct application of the cost recovery adjustment percentage (CRAC%) to the irrigation discount, an additional adjustment shall be made so that irrigation loads are not disproportionately affected by a 9-month adjustment period as compared to a 12-month adjustment period. The direct and additional adjustments are reflected in the following formula:

Adjusted Irrigation Discount (in mills per kilowatthour)

=4.6 * (1 + CRAC%/100) + (0.046 * CRAC%)

where:

4.6=Irrigation discount applicable to PF–89 and NR–89. in mills per kilowatthour; and

0.046=adjustment to account for the disproportionate impact of CRAC on irrigation loads, in mills per kilowatthour per percentage CRAC adjustment.

e. *Cost Recovery Adjustment Clause Implementation Process.* (1) Within 30 days after the end of FY 1989 and within 30 days after the end of FY 1990. BPA shall make an initial calculation to identify the preliminary, unaudited net revenues.

(2) On or about November 1 of each of the years 1989 and 1990, BPA shall notify interested persons and the purchasers under each applicable rate schedule of BPA's initial findings

concerning the net revenues for the evaluation period.

(a) If no adjustment is required, or if the Administrator waives implementation of an adjustment, BPA shall state in the notice the basis for its decision, and no further process will be required.

(b) If BPA determines that an adjustment to applicable rates is required, BPA shall state in the notice the amount of the adjustment, the calculation of the adjustment, and the resulting level of the adjustment to each applicable rate schedule. The notice shall also contain the data and assumptions prepared and relied upon by BPA, with references to additional documentation, if any, prepared and relied upon by BPA. Such documentation, if nonproprietary and/or nonprivileged, shall be available upon request unless unduly burdensome. The notice shall also contain the tentative schedule for the remainder of the implementation process.

(3) On or about November 6, 1989, and November 5, 1990, BPA shall conduct a public meeting in which interested persons and purchasers under each applicable rate schedule may seek off-the-record clarification, calculation, and application of the adjustment amount to specific rate schedules. For the purpose of further mailings, a list of the names and addresses of interested persons and purchasers (hereafter referred to as "mailing list") shall be compiled at this meeting.

(4) On or about November 10, 1989, and November 9, 1990, purchasers under each applicable rate schedule may submit information requests to BPA regarding the adjustment. The requests shall also be mailed to all persons on the mailing list. BPA shall respond to the requests within 2 working days of their receipt, or as soon as practicable if 2 days is insufficient time within which to respond.

(5) On or about November 17, 1989, and November 16, 1990, interested persons and purchasers under each applicable rate schedule may submit written comments to BPA regarding the adjustment. The comments shall also be mailed to all persons on the mailing list.

(6) On or about December 1, 1989, and November 30, 1990, commenters may respond to any comments.

(7) On or about December 1, 1989, and November 30, 1990, BPA may release, if available, revised preliminary unaudited net revenues and any resulting revised adjustment to applicable rate schedules.

(8) On or about December 15, 1989, and December 14, 1990, BPA shall conduct an on-the-record public comment forum in which interested persons and purchasers under each applicable rate schedule may present oral comments to BPA.

(9) On or about December 20, 1989, and December 19, 1990, BPA shall notify interested persons and purchasers under each applicable rate schedule of the audited net revenue balance, the amount of the adjustment, the calculation of the adjustment, and the resulting level of the adjustment to each applicable rate schedule. The notice shall also contain the data and assumptions prepared and relied upon by BPA, with references to additional documentation, if any, prepared and relied upon by BPA.

(10) If there is a rate adjustment due the CRAC following the FY 1989 evaluation period, it shall be in effect from January 1, 1990, through September 30, 1990.

If there is a rate adjustment due to the CRAC following the FY 1990 evaluation period, it shall be in effect from January 1, 1991, through September 30, 1991.

6. Coincidental Billing

Purchasers of Priority Firm Power and New Resource Firm Power shall be billed on a noncoincidental demand basis for power purchased at each point of delivery under the applicable rate schedule(s) unless the power sales contract specifically provides for coincidental demand billing among particular points of delivery. For the purpose of these rate schedules and GRSPs, the purchaser's noncoincidental demand is the sum of the highest hourly peak demands during the billing month for each of the purchaser's points of delivery. The purchaser's coincidental demand is the highest demand for the billing month calculated by summing, for each hour of every day, the purchaser's demands for power purchased under the applicable rate schedule at all coincidentally billed points of delivery. See the Special Provisions Exhibits of the Power Sales Contract, GCP, E, 17.

7. Conservation Surcharge

The Conservation Surcharge shall be applied monthly and shall equal 10 percent of the customer's total monthly charge for all power purchased under each rate schedule subject to the surcharge. The PF, CF, and NR rate schedules are subject to the Conservation Surcharge. If only a portion of the customer's service area is subject to the surcharge, then the amount of the surcharge shall equal 10 percent of the total charge for all power purchases multiplied by: (a) the portion of the customer's total retail load that is subject to the surcharge, divided by (b) the customer's total retail load.

D. Billing-Related Definitions

1. *Peak Period.* The Peak Period includes the hours from 7 a.m. through 10 p.m. on any day Monday through Saturday inclusive. There are no exceptions to this definition; that is, it does not matter whether the day is a normal working day or a holiday. Any charges based on Peak Period hours shall be computed starting with the 8 a.m. meter reading since this reading applies to the 7 o'clock hour (7 a.m. to 8 a.m.). The 10 p.m. meter reading (for the 9 p.m. to 10 p.m. period) is the last meter reading of the day applicable to the Peak Period.

2. *Offpeak Period.* The Offpeak Period includes all hours which do not occur during the Peak Period. Thus, the Offpeak Period consists of the hours from 10 p.m. to 7 a.m., Monday through Saturday and all hours on Sunday. This definition does not apply to the Special Industrial Offpeak Rate.

Section IV. Other Definitions

A. Computed Requirements Purchasers

1. Designation as a Computed Requirements Purchaser

A purchaser shall be designated as a computed requirements purchaser if it is so designated pursuant to the provisions of its power sales contract.

When a purchaser operates two or more separate systems, only those systems designated by BPA will be covered by this section.

2. Purpose of the Computed Requirements Designation

Use of the computed requirements designation is intended to assure that each purchaser who purchases power from BPA to supplement its own firm resources will purchase amounts of firm capacity and firm energy substantially equal to that which the purchaser would otherwise have to provide on the basis of normal and prudent operations.

The amount of capacity and energy required for normal and prudent operations shall be determined pursuant to the purchaser's power sales contract.

B. Definitions Relating to Nonfirm Energy Decremental Cost

Unless otherwise specified in a contractual arrangement, decremental cost as applied to Nonfirm Energy transactions shall be defined as:

1. All identifiable costs (expressed in mills per kilowatthour) associated with the use of a displaceable thermal resource or end-user load with alternate fuel source to serve a purchaser's load that the purchaser is able to avoid by purchasing power from BPA, rather than

generating the power itself or using an alternate fuel source; or

2. All identifiable costs (expressed in mills per kilowatthour) to serve the load of a displaceable purchase of energy that the purchaser is able to avoid by choosing not to make the alternate energy purchase.

All identifiable costs as used in the above definition may be reduced to reflect costs of purchasing BPA energy such as transmission costs, losses, or loopflow constraints that are agreed to by BPA and the purchaser.

C. NF Rate Cap

1. Application of the NF Rate Cap

The NF Rate Cap defines the maximum nonfirm energy price for general application. At no time shall the total price for nonfirm energy, including any applicable service charges or rate adjustment, sold under any applicable rate schedule exceed the NF Rate Cap. The level of the NF Rate Cap is based on formula tied to BPA's system cost and California fuel costs. The NF Rate Cap applies to all sales of nonfirm energy under any applicable rate schedule for a 12-year period beginning October 1, 1987.

2. Monthly Notification of the NF rate Cap

Prior to the beginning of a calendar month BPA shall perform the calculations contained in section IV.C.3. of these GRSPs to determine the effective NF Rate Cap for that calendar month. BPA is obligated to provide advance notification of the NF Rate Cap level to purchasers of nonfirm energy. BPA may waive this requirement only if BPA does not intend to offer Nonfirm Energy at prices above BASC at any time during a month. The notification will be given at least 10 calendar days prior to the first day of any calendar month in which the NF Rate Cap applies. BPA shall also maintain, on file for public review, a record of the NF rate Cap by month throughout the period the cap is in effect.

3. NF Rate Cap Formula

The NF Rate Cap shall be equal to the greater of the following:

a. BASC; or

b. BASC + .30(DEC−BASC)

Where:

BASC=BPA's average system cost, determined by dividing BPA's total system costs by BPA's total system sales. For this rate period BASC has been determined to be 23.2 mills per kilowatthour.

DEC=The Decremental Fuel Cost as determined in accordance with section IV.C.5. of these GRSPs.

4. Determination of BPA's average system cost

For purposes of determining BPA's average system cost (BASC), the following definition shall apply:

a. BPA's total system costs shall be the sum of all BPA's costs forecasted in each general rate case for the applicable rate period, including total transmission costs, Federal base system costs, new resource costs, exchange resource costs, and other costs not specifically allocated to a rate pool, such as section 7(g) costs.

b. BPA's total annual system sales shall be the sum of all BPA's system firm and nonfirm sales forecasted each general rate case for the applicable test period.

BASC shall be redetermined in each subsequent general rate case according to the above formula and will be in effect for the entire rate period over which the rates are in effect.

5. Determination of Decremental Fuel Cost

The Decremental Fuel Cost shall be determined monthly by BPA. For purposes of calculating the NF Rate Cap, a weighted average of gas and petroleum prices for California will be used for approximating decremental fuel costs. The monthly decremental fuel cost shall be:

a. The sum of:

(1) The average California price for gas determined by multiplying the monthly gas use (WGU) developed pursuant to section IV.C.8.a. times the monthly California gas price (MGP) determined pursuant to section IV.C.6 rounded to the nearest tenth of a mill; and

(2) The average California price for petroleum determined by multiplying the monthly petroleum use (WOU) developed pursuant to section IV.C.8.b times the monthly California petroleum price (MOP) determined pursuant to section IV.C.7. rounded to the nearest tenth of a mill.

b. Divided by the sum of the monthly gas use (WGU) and monthly petroleum use (WOU) developed in section IV.C.8.a. and b. respectively rounded to the nearest tenth of a mill.

6. California Gas Price

The monthly gas price (MGP) for purposes of calculating the decremental cost component of the rate cap shall based on the following formula:

MGP=AGP*HGP/10

where:

AGP=the average gas price for California electric utility plants expressed in cents per million Btu as reported in the most recent monthly issue of *Electric Power Monthly* (EPM) published by the Energy Information Administration (EIA), U.S. Department of Energy. Prices shall be rounded to the nearest one-tenth of a cent.

HGP=the historical relationship between gas prices in the effective month of the NF Rate Cap (month t) and the month in which the gas prices are reported in EPM (month r) using the following procedures:

a. Summing all California gas prices, expressed in the nearest one-tenth of a cent per million Btu, reported in EPM for month t for the years beginning with calendar year 1982 up to and including the prior calendar year. The sum of the historical monthly California gas prices shall be divided by the number of years for which monthly gas prices were reported and rounded to the nearest one-tenth of a cent.

b. Summing all California gas prices, expressed in the nearest one-tenth of a cent per million Btu, reported in EPM for month r for the years beginning with calendar year 1982 up to and including the prior calendar year. The sum of the historical monthly California gas prices shall be divided by the number of years for which monthly gas prices were reported and rounded to the nearest one-tenth of a cent.

c. Dividing the average monthly California gas price in a. above, by the average monthly California gas price in b. above, and rounding to the nearest one-tenth, or three significant places.

10=the factor for converting gas prices stated in cents per million Btu to mills per kWh. The factor assumes a heat rate of 10,000 Btu per kilowatthour.

7. California Petroleum Price .

The monthly petroleum price (MOP) for purposes of calculating the decremental cost component of the rate cap shall be based on the following formula:

MOP=AOP*HOP/10

where:

AOP=the last available average oil price for California electric utility plants expressed in cents per million Btu reported in *Electric Power Monthly* (EPM) published by the Energy Information Administration (EIA), U.S. Department of Energy. Prices shall be rounded to the nearest one-tenth of a cent.

HOP = the historical relationship between petroleum prices in the effective month of the NF Rate Cap (month t) and the last month in which the petroleum prices are reported in EPM (month r) using the following procedures:

a. Summing all California petroleum prices, expressed in the nearest one-tenth of a cent per million Btu, reported in EPM for month t for the years beginning with calendar year 1982 up to and including the prior calendar year. The sum of the historical monthly California petroleum prices shall be divided by the number of years for which monthly petroleum prices were reported and rounded to the nearest one-tenth of a cent.

b. Summing all California petroleum prices, expressed in the nearest one-tenth of a cent per million Btu, reported in EPM for month r for the years beginning with calendar year 1982 up to and including the prior calendar year. The sum of the historical monthly California petroleum prices shall be divided by the number of years for which monthly petroleum prices were reported and rounded to the nearest one-tenth of a cent.

c. Dividing the average monthly California petroleum price in a. above, by the average monthly California petroleum price in b. above, and rounding to the nearest one-tenth of a percent, or three significant places.

10 = the factor for converting petroleum prices stated in cents per million Btu to mills per kWh. The factor assumes a heat rate of 10,000 Btu per kilowatthour.

8. Weighting Factors

For purposes of determining California fuel prices for the month, gas and petroleum prices will be weighted based on California's historical use of these two alternative fuels.

a. *Historical Gas Use in California.* The following formula shall be used to determine the weighting factor for gas prices (WGU):

WGU = CGU*HGU

where:

CGU = the monthly net gas-fired generation, expressed in gigawatthours, for California in the most recent monthly issue of *Electric Power Monthly* (EPM) published by the Energy Information Administration (EIA), U.S. Department of Energy.

HGU = the historical relationship between gas consumptions in the effective month of the NF Rate Cap (month t) and the month for which gas consumption is reported in EPM (month r) using the following procedures:

(1) Summing the reported net-gas fired generation for California, expressed in gigawatthours, from EPM for month t for the years beginning with calendar year 1982 up to and including the prior calendar year. The sum of California's historical monthly consumption shall be divided by the number of years for which gas consumption was reported and rounded to the nearest gigawatthour.

(2) Summing the reported net gas-fired generation for California, expressed in gigawatthours, from EPM for month r for the years beginning with calendar year 1982 up to and including the prior calendar year. The sum of California's historical monthly consumption shall be divided by the number of years for which gas consumption was reported and rounded to the nearest gigawatthour.

(3) Dividing the average consumption of gas in California for the month t as determined in (1) above by the average consumption of gas for the month r as determined in (2) above and rounding to the nearest one-tenth, or three significant places.

b. *Historical Petroleum Use in California.* The following formula shall be used to determine the weighting factor for petroleum prices (WOU):

WOU = OU*HOU

where:

COU = the monthly net petroleum-fired generation, expressed in gigawatthours, in California in the most recent monthly issue of *Electric Power Monthly* (EPM) published by the Energy Information Administration (EIA), U.S. Department of Energy.

HOU = the historical relationship between petroleum consumptions in the effective month of the NF Rate Cap (month t) and the month for which petroleum consumption is reported in EPM (month r) using the following procedures:

(1) Summing the reported net-petroleum generation for California, expressed in gigawatthours, from EPM for month t for the years beginning with calendar year 1982 up to and including the prior calendar year. The sum of California's historical monthly consumption shall be divided by the number of years for which petroleum consumption was reported and rounded to the nearest gigawatthour.

(2) Summing the reported net-petroleum generation for California, expressed in gigawatthours, from EPM for month r for the years beginning with calendar year 1982 up to and including the prior calendar year. The sum of California's historical monthly consumption shall be divided by the number of years for which petroleum consumption was reported and rounded to the nearest gigawatthour.

(3) Dividing the average consumption of petroleum in California for the month t as determined in (1) above by the average consumption of petroleum for the month r as determined in (2) above and rounding to the nearest one-tenth, or three significant places.

D. Determination of BPA's Average System Cost.

For purposes of determining BPA's average system cost (BASC), the following definition shall apply:

1. BPA's total system costs shall be the sum of all BPA's costs forecasted in each general rate case for the applicable rate period, including total transmission costs. Federal base system costs, new resource costs, exchange resource costs, and other costs not specifically allocated to a rate pool, such as section 7(g) costs.

2. BPA's total annual system sales shall be the sum of all BPA's system firm and nonfirm sales forecasted in each general rate case for the applicable test period.

BASC shall be redetermined in each subsequent general rate case according to the above formula and will be in effect for the entire rate period over which the rates are in effect.

Section V. Application of Rates Under Special Circumstances

A. Energy Supplied for Emergency Use

A purchaser taking Priority Firm or New Resource Firm Power shall pay in accordance with the Nonfirm Energy rate schedule, NF–89, and Emergency Capacity rate schedule, CE–89, for any electric energy or capacity which has been supplied:

1. For use during an emergency on the purchaser's system, or

2. Following an emergency to replace energy secured from sources other than BPA during such emergency.

Mutual emergency assistance may, however, be provided and payment therefore settled under exchange agreements.

B. Construction, Test and Start-Up, and Station Service

Power for the purpose of construction, test and start-up, and station service shall be made available to eligible purchasers under the Priority Firm and New Resource Firm Power Rate Schedules. Such power must be used in the manner specified below:

1. Power sold for construction is to be used in the construction of the project.

2. Power sold for test and start-up may be used prior to commercial operation both to bring the project on line and to ensure that the project is working properly.

3. Power sold for station service may be purchased at any time following commercial operation of the project. Station service power may be used for project start-up, project shut-down, normal plant operations, and operations during a plant shut-down period.

C. Application of Rates During Initial Operation Period-Transitional Service

1. Eligibility for Transitional Service

For an initial operating period, as specified in the power sales contract, beginning with the commencement of operation of a new industrial plant, a major addition to an existing plant, or reactivation of an existing plant or important part thereof, BPA may agree to bill the purchaser in accordance with the provisions of this section. This section shall apply to both:

a. DSIs having new, additional or reactivated plant facilities, and

b. Utility purchasers serving industrial purchasers with power purchased from BPA. BPA will provide transitional service to utilities for only those industrial loads for which the demand can be separately metered by the utility and recorded on a daily basis.

2. Calculation of the Daily Demand

If the purchaser requests billing on a Daily Demand basis pursuant to its power sales contract and if BPA agrees to such billing. The billing demand for the billing month shall be the average of the Daily Demands as adjusted for power factor.

Demand for each day shall be defined as 100 percent of the Measured Demand for the day (regardless of whether such Measured Demand occurs during the Peak Period or the Offpeak Period).

3. Billing for Transitional Service

Utilities receiving transitional service shall provide BPA with Daily Demand information for the industrial consumer for whom transitional service is provided. To compute the power bill for the point of delivery which includes the load being served with transitional service, BPA shall, at its discretion, either:

a. Determine the demand for the pertinent point of delivery without the industrial load and then add the average daily demand for such industrial load; or

b. Bill the entire point of delivery on a daily demand basis.

Daily demand billing shall not affect the level of any curtailment charge or energy charge assessed by BPA.

D. Changes in a DSI's BPA Operating Level

If a DSI requests a waiver regarding the notice requirements specified in the DSI's power sales contract for a voluntary change in its BPA Operating Level, and if BPA does not grant the waiver, or if the DSI fails to give notice of such a change and does not request a waiver, the DSI shall be billed as if no notice has been provided until such time as the number of days in the notice period have passed. If, however, BPA agrees to waive the notice requirement, the power bill shall reflect the requested changes as of the requested effective date specified in the notice or, at BPA's discretion, a date of BPA's choosing within the notice period.

E. Restriction of Deliveries

Deliveries of capacity or energy to any purchaser may be restricted when operation of the facilities used by BPA to serve such purchaser is:

1. Suspended,
2. Interrupted,
3. Interfered with,
4. Curtailed, or
5. Restricted

By the occurrence of any condition described in the Uncontrollable Forces or Continuity of Service sections of the General Contract Provisions of the power sales contract.

Section VI. Billing Information

A. Determination of Estimated Billing Data

If the amounts of capacity, energy, or the 60-minute integrated demands for energy purchased from BPA must be estimated from data other than metered or scheduled quantities, historical patterns, and pertinent weather data, BPA and the purchaser will agree on billing data to be used in preparing the bill. If the parties cannot agree on estimated billing quantities, derived by any method, a determination binding on both parties shall be made in accordance with the arbitration provisions of the power sales contract.

B. Load Shift and Outage Reports

Load shift and outage reports must be submitted to BPA within 4 days of the corresponding load shift or outage. Reports may be made by telephone, mail, or other electronic processes where available. If customer reports are not received in a timely manner, BPA has the option to withhold load shift or outage credit.

C. Billing for New Large Single Loads

Any BPA customer whose total load includes one or more New Large Single Loads (NLSL) shall be billed for the NLSL(s) at the New Resource Firm Power Rate. The power requirements associated with the NLSL shall be established in a manner consistent with the provisions of this section.

The purchaser shall warrant to BPA that NLSLs are separately metered. The metering must include provisions for determining:

1. The NLSL demand during BPA's diurnal capacity billing periods,

2. The NLSL energy during BPA's energy billing periods, and

3. The NLSL reactive energy for the billing month.

The design for the metering equipment for the NLSL must be approved by BPA. Testing and inspections of such metering installations shall be as provided in the General Contract Provisions.

On a monthly basis, each purchaser of New Resource Firm Power shall report to BPA the quantity of power used by the NLSL during the *purchaser's* billing period. Data provided to BPA by the purchaser must be submitted to BPA within 2 normal working days of the date the purchaser reads the meters. BPA may elect to adjust the NLSL data for losses from the point of metering to the closest BPA point of delivery for the purchaser.

D. Determination of Measured Demand

1. For points of delivery with fully operational metering under the Revenue Metering System (RMS), demand shall be measured from 0000 hours on the first day of the billing period through 2400 hours on the last day of the billing period.

2. For points of delivery that do not have RMS metering, demand shall be measured from 0000 hours on the first complete (24 hour) day of the available metering data through 2400 hours on the last complete day of the available metering data. Billing demand will be determined from the period of available metering data that most closely matches the official billing period of the customer.

E. Determination of Measured Energy

1. For points of delivery with fully operational metering under RMS, energy shall be measured from 0000 hours on the first day of the billing period through 2400 hours on the last day of the billing period.

2. For points of delivery that do not have RMS metering, measured energy shall be the quantity of usage recorded on the meter between meter readings.

F. Billing Month

Meters normally will be read and bills computed at intervals of 1 month. A month is defined as the interval between meter-reading dates which normally will be approximately 30 days. If service is for less than or more than the normal billing month, the monthly charges stated in the applicable rate schedule shall be adjusted appropriately.

The calendar month in which the purchaser's meter is scheduled to be read determines the billing month. (Thus, a bill associated with a meter scheduled to be read on April 10 would be an April bill.) The charges for the winter and summer periods identified in the rate schedules apply to the purchaser's billing months.

G. Payment of Bills

Bills for power shall be rendered monthly by BPA. Failure to receive a bill shall not release the purchaser from liability for payment. Bills for amounts due BPA of $50,000 or more must be paid by direct wire transfer; customers who expect that their average monthly bill will not exceed $50,000 and who expect special difficulties in meeting this requirement may request, and BPA may approve, an exemption from this requirement. Bills for amounts due BPA under $50,000 may be paid by direct wire transfer or mailed to the Bonneville Power Administration, P.O. Box 6040, Portland, Oregon 97228–6040, or to another location as directed by BPA. The procedures to be followed in making direct wire transfers will be provided by the Office of Financial Management and updated as necessary.

1. Computation of Bills

Demand and energy billings for power purchased under each rate schedule shall be rounded to whole dollar amounts, by eliminating any amount which is less than 50 cents and increasing any amount from 50 cents through 99 cents to the next higher dollar.

2. Estimated Bills

At its option, BPA may elect to render an estimated bill for that month to be followed at a subsequent billing date by a final bill. Such estimated bill shall have the validity of and be subject to the same payment provisions as a final bill.

3. Due Date

Bills shall be due by close of business on the 20th day after the date of the bill (due date). This requirement holds also for revised bills (see section 6 below). Should the 20th day be a Saturday, Sunday, or holiday (as celebrated by the purchaser), the due date shall be the next following business day.

4. Late Payment

Bills not paid in full on or before close of business on the due date shall be subject to a penalty charge of $25. In addition, an interest charge of one-twentieth percent (0.05 percent) shall be applied each day to the sum of the unpaid amount and the penalty charge. This interest charge shall be assessed on a daily basis until such time as the unpaid amount and penalty charge are paid in full.

Remittances received by mail will be accepted without assessment of the charges referred to in the preceding paragraph provided the postmark indicates the payment was mailed on or before the due date. Whenever a power bill or a portion thereof remains unpaid subsequent to the due date and after giving 30 days' advance notice in writing, BPA may cancel the contract for service to the purchaser. However, such cancellation shall not affect the purchaser's liability for any charges accrued prior thereto under such contract.

5. Disputed Billings

In the event of a disputed billing, full payment shall be rendered to BPA and the disputed amount noted. Disputed amounts are subject to the late payment provisions specified above. BPA shall separately account for the disputed amount. If it is determined that the purchaser is entitled to the disputed amount, BPA shall refund the disputed amount with interest, as determined by BPA's Office of Financial Management.

BPA retains the right to verify, in a manner satisfactory to the Administrator, all data submitted to BPA for use in the calculation of BPA's rates and corresponding rate adjustments. BPA also retains the right to deny eligibility for any BPA rate or corresponding rate adjustment until all submitted data have been accepted by BPA as complete, accurate, and appropriate for the rate or adjustment under consideration.

6. Revised Bills

As necessary, BPA may render a revised bill. A revised bill shall replace all previous bills issued by BPA that pertain to a specified customer for a specified billing period if the amount of the revised bill is less than the amount of the original bill. If the amount of the revision causes an additional amount to be due BPA beyond the original bill, a revised bill will be issued for the difference.

The date of the revised bill shall be determined as follows:

a. If the amount of the revised bill is equal to or less than the amount of the bill which it is replacing, the revised bill shall have the same date as the replaced bill.

b. If the amount of the revised bill is greater than the amount of the bill which it is replacing, the additional amount will be billed on a separate bill, and the date of the revised bill shall be its date of issue.

Section VII. Variable Industrial Rate Parameters and Adjustments

A. Monthly Average Aluminum Price Determination

1. Calculation of the Monthly Billing Aluminum Price

The monthly billing aluminum price shall be determined by BPA for each billing month. For purposes of this rate schedule, the monthly billing aluminum price shall be based on the average price of aluminum in U.S. markets during the third calendar month prior to the billing month. The average price of aluminum in U.S. markets shall be defined as the average U.S. Transaction Price reported for the month by *Metals Week*, in cents per pound, rounded to the nearest tenth of a cent.

2. Notification of the Monthly Average Aluminum Price

BPA shall provide, 45 days prior to the billing month, written notification to purchasers under this rate schedule of the monthly billing aluminum price to be used for billing purposes. Upon written request supporting documentation shall be provided.

3. Changes in Aluminum Price Indicators

In the event that BPA determines that factors outside its control render the monthly average U.S. Transaction Price unusable as an approximation of U.S. market prices, BPA may develop and substitute another indicator for prices in U.S. markets. BPA shall notify interested parties of its intent to do so at least 120 days prior to the billing month in which the change would become effective. In this notification, BPA shall explain the reason for the substitution and specify the replacement indicator it intends to use. BPA also shall describe the methodology to determine the monthly billing aluminum price to be used for billing purposes under this rate schedule and shall provide the necessary data to be used in the calculation. Interested persons will have until close of business 3 weeks from the date of the notification to provide comments. Consideration of

comments and more current information may cause the final methodology and the substitute aluminum price index to differ from those proposed. BPA shall notify all affected parties, and those parties that submitted comments, of its final determination 90 days prior to the billing month the new indicator shall be effective.

B. Annual Adjustments to the Lower and Upper Pivot Aluminum Prices

On July 1, 1987, and every July 1 thereafter, the Lower and Upper Pivot Aluminum Prices, as stated in section III.B of the rate schedule, shall be subject to change for billing purposes as herein described. The term "annual adjustment date" shall refer to July 1 of each year.

1. Implementation Procedures

Beginning in 1987 and every year thereafter, prior to April 1 of that year, BPA shall provide the purchasers under this rate schedule preliminary written estimates of proposed adjustments to the Lower and Upper Pivot Aluminum Prices. By the last working day of the month of April, BPA shall notify interested parties in writing of BPA's revised determinations concerning changes to the Lower and Upper Pivot Aluminum Prices. BPA shall describe how the adjustments were determined and provide the data used in the calculations. In addition to written notification, BPA may, but is not obligated to, hold a public comment forum to clarify its determinations and solicit comments. Interested persons may submit comments on the determinations to BPA and other parties. Comments will be accepted until close of business on the last working Friday in May. Consideration of comments and more current information may result in the final adjustment differing from the proposed adjustment. By June 30 of each year, BPA shall notify all VI purchasers, those parties that submitted comments, and parties that requested notification, of the final determination.

2. Annual Adjustment Procedures

a. *Annual Adjustment of the Lower Pivot Aluminum Price.* Beginning with the July 1, 1987, annual adjustment date, for each year that the Variable Industrial rate is in effect, the Lower Pivot Aluminum Price as stated in section III.B.1 of the rate schedule shall be adjusted on the July 1 annual adjustment date. The Lower Pivot Aluminum Price shall be revised by multiplying 59 cents per pound by the Cost Escalation Index described in section VII.B.3.b of these GRSPs and rounded to the nearest tenth of a cent. The revised Lower Pivot Aluminum Price shall replace the Lower Pivot Aluminum Price as stated in section III.B.1 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 billing months.

b. *Annual Adjustment of the Upper Pivot Aluminum Price.* For each year that the Variable Industrial rate is in effect, the Upper Pivot Aluminum Price as stated in section III.B.2 of the rate schedule shall be adjusted on the July 1 annual adjustment date.

(1) *Annual adjustment for the period beginning July 1, 1987, and ending June 30, 1991.* The Upper Pivot Aluminum Price shall be revised by multiplying 72 cents per pound by the Cost Escalation Index described in section VII.B.3.c of these GRSPs and rounded to the nearest tenth of a cent. The revised Upper Pivot Aluminum Price shall supersede the Upper Pivot Aluminum Price as stated in section 111.B.2 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 billing months.

(2) *Annual Adjustment for the period beginning July 1, 1991, and ending June 30, 1993.* The Upper Pivot Aluminum Price will be adjusted such that the Average Historical Aluminum Price described in section VII.B.4 of these GRSPs is the midpoint between the adjusted Upper Pivot Aluminum Price and the Average Historical Lower Pivot Aluminum Price described in section VII.B.5 below, except as limited to the greater of 65 cents per pound or the adjusted Lower Pivot Point for the year.

The Upper Pivot Aluminum Price shall equal the greater of:

(a) (2)(AAP)—ALP:

where

AAP = the Average Historical Aluminum Price described in section VII.B.4 of these GRSPs.

ALP = the Average Historical Lower Pivot Aluminum Price described in section VII.B.5 of these GRSPs.

(b) 65.0 cents per pound escalated to current dollars using the Cost Escalator for the Upper Pivot Aluminum Price described in section VII.B.3.c of these GRSPs.

or

(c) The adjusted Lower Pivot Aluminum Price for the year.

The revised Upper Pivot Aluminum Price shall supersede the Upper Pivot Aluminum Price as stated in section III.B.2 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 months.

3. Cost Escalators

a. The cost indices described below shall be used in calculating the appropriate cost escalators. Each index shall be rounded to the nearest one-tenth of a percent, or three significant places.

(1) *Electricity Cost Index.* The average VI–86 rate in mills per kilowatthour based on the Plateau Energy Charge and the Discount for Quality of First Quartile Service in effect on the April 1 preceding the annual adjustment date and a load factor of 98.5 percent; divided by 22.8 mills per kilowatthour (the average VI–86 rate assuming the plateau energy charge and the Discount for Quality of First Quartile Service in 1986).

(2) *Labor Cost Index.* The annual average hourly earnings for the U.S. primary aluminum industry (SIC 3334) over the previous complete calendar year, from the Employment and Earnings, published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS), divided by $14.20 per hour (the value of SIC 3334 earnings reported for 1985).

(3) *Alumina Cost Index.* The annual average of the monthly billing aluminum prices described in section VII.A of the GRSPs for the previous 1-year period beginning July 1 through June 30 divided by 50.8 cents per pound (the average U.S. Transaction price over the period April 1985 through March 1986).

(4) *Other Costs Index.* The annual average GNP Implicit Price Deflator for the previous complete calendar year, as published by the U.S. Department of Commerce, Bureau of Economic Analysis, divided by 1.115 (the value of the GNP Implicit Price Deflator for 1985 with 1982=1.000).

In the event the indices delineated above are discontinued or revised in a manner that BPA determines renders them unusable for calculating a consistent cost index, BPA will adjust or substitute another similar price index, following advance notification and opportunity for public comment as described in section VII.B.1 of these GRSPs.

b. The Cost Escalator for the Lower Pivot Aluminum Price shall be a weighted average of the four indices contained in section VII.B.3.a above. The following weights shall be assigned each index:

Electricity Cost Index	.30
Labor Cost Index	.20
Alumina Cost Index	.20
Other Costs Index	.30

c. The Cost Escalator for the Upper Pivot Aluminum Price shall be a weighted average of the Electricity Cost and Other Cost Escalators as stated in sections VII.B.3.a.(1) and VII.B.3.a.(4) above. The following weights shall be assigned each index:

Electricity Cost Index	.25
Other Costs Index	.75

4. Average Historical Aluminum Price

Prior to the July 1, 1991, annual adjustment date and every annual adjustment date thereafter, an average historical aluminum price shall be calculated for the period the Variable rate has been in effect. The average historical aluminum price shall be determined following the procedures set forth below:

a. Each monthly billing aluminum price determined pursuant to section VII.A of these GRSPs for the period August 1, 1986, through June 30 immediately preceding the annual adjustment date, shall be escalated to the current year dollars using the Price Deflator procedures described in section VII.B.6 below.

b. The sum of the escalated monthly billing aluminum prices shall be divided by the number of months in the period and rounded to the nearest tenth of a cent to obtain the Average Historical Aluminum Price.

5. Average Historical Lower Pivot Aluminum Price

Prior to the July 1, 1991, annual adjustment date and every annual adjustment date thereafter, the average of the Lower Pivot Aluminum Prices for the period the Variable Industrial rate has been in effect shall be calculated following the procedures set forth below:

a. The Lower Pivot Aluminum Price in each month for the period August 1, 1986, through June 30 of the calendar year preceding the annual adjustment date, shall be escalated to the current year's dollars using the Price Deflator procedures described in section VII.B.6 below.

b. The sum of the escalated monthly Lower Pivot Aluminum Prices shall be divided by the number of months in the period, and rounded to the nearest tenth of a cent to obtain an Average Historical Lower Pivot Aluminum Price.

6. Price Deflator Procedures

For purposes of converting nominal dollars to real dollars in the calculation of the Average Historical Aluminum Price and the Average Historical Lower Pivot Aluminum Price, the following Price Deflator procedures shall be used:

a. Monthly billing aluminum prices and Lower Pivot Aluminum Prices for any calendar months July through December shall be inflated by multiplying the price by the ratio of the GNP Implicit Price Deflator for the calendar year prior to the annual adjustment date divided by the Implicit Price Deflator for the calendar year in which the price occurred.

b. Monthly billing aluminum prices and Lower Pivot Aluminum Prices for any calendar months January through June shall be inflated by multiplying the price by the ratio of the Implicit Price Deflator for the calendar year prior to the annual adjustment date divided by the Implicit Price Deflator for the calendar year prior to the year in which the price occurred. Each price shall be rounded to the nearest tenth of a cent.

Issued in Portland, Oregon, on February 8, 1989.

Jack Robertson,

Deputy Administrator.

[FR Doc. 89-4210 Filed 2-17-89; 4:49 pm]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-646-000 and CP89-654-000; CP89-661-000]

Champlain Pipeline Co., et al.; Intent To Prepare a Draft Environmental Impact Statement for the Proposed Champlain Pipeline Project and Request for Comments on Its Scope

February 17, 1989.

Introduction

On January 17, 1989, Champlain Pipeline Company (Champlain) and Algonquin Gas Transmission Company (Algonquin) filed related applications before the Federal Energy Regulatory Commission (FERC) in the above-referenced dockets, under section 7 of the Natural Gas Act, for authorization to transport up to 430,591 MMBtu/d (million Btu's per day) of Canadian natural gas. The gas would be received by Champlain from TransCanada Pipelines Limited (TransCanada) at the U.S./Canada border in Vermont, for delivery by Champlain and Algonquin to local distribution companies, cogeneration and power generation customers in Vermont, New Hampshire, Massachusetts, Rhode Island and Connecticut. Champlain also filed an application for a Presidential permit pursuant to section 3 of the Natural Gas Act for authorization to construct and operate facilities at the international border between the United States and Canada.

Champlain proposes to construct a total of 334.9 miles of new pipeline extending from the U.S./Canada border through the states of Vermont, New Hampshire and Massachusetts; and a new 4000 horsepower compressor station near Middlebury, Vermont. Champlain's pipeline system would consist of a 24-inch-diameter mainline, two 10-inch-diameter mainline branches, the Berkshire and Pelham Branches, and two smaller branch pipelines, a 10-inch diameter Colrain Branch and an 8-inch-diameter Nashua Branch. Champlain would interconnect with Tennessee Gas Pipeline Company (Tennessee) near Upton, Massachusetts, and with Algonquin near West Medway, Massachusetts.

The proposed Algonquin portion of the Champlain Pipeline Project consists of facilities to be added to its existing pipeline system to permit transportation of 307,174 MMBtu/d of gas received from Champlain to various delivery points along its system. These facilities include: A new 12,600 horsepower compressor station in Mendon, Massachusetts, and a total of 41.6 miles of 12- through 36-inch-diameter pipeline loops, and laterals at various points along Algonquin's system in Connecticut, Rhode Island and Massachusetts.

Refer to Table 1 for a breakdown of the proposed facilities by applicant and location. The Algonquin proposal includes facilities necessary to carry out additional transportation services for Iroquois Gas Transmission System (Iroquois) and ANR Pipeline Company (ANR).

The proposals filed by Iroquois, Tennessee and ANR will be discussed in separate environmental documents.

Concurrent with this notice, a separate notice for the Iroquois/Tennessee Pipeline Project is being issued. Anyone affected by both projects, including Federal, state and local entities, will be sent both notices. Anyone else can request a copy of the other notice by contacting the FERC project manager.

Approval of the Champlain Pipeline Project would likely result in the construction of additional facilities by local distribution companies and other end users. These include a total of approximately 27 miles of small diameter pipeline at about 20 different locations along the Champlain and Algonquin systems, and eight new or modified cogeneration and electric power plant facilities.

Comments are requested on the specific environmental issues which exist at any of the sites where non-jurisdictional facilities are proposed. If no issues are raised and the facilities have been approved or are being reviewed at the state or local level, or if

there are no direct tie-ins to the interstate pipeline network, the Commission staff intends to limit its environmental review. In this case, the review would primarily address the potential indirect effects on endangered species and cultural resources.

Notice of Intent

Notice is hereby given that the staff of the FERC has determined that approval of the Champlain Pipeline Project proposed by Champlain and Algonquin would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 380.6(a)(3) of the Commission's Rules of Practice and Procedure, 18 CFR 380.6(a)(3), an Environmental Impact Statement (EIS) will be prepared.

TABLE 1.—CHAMPLAIN PIPELINE PROJECT FACILITY LOCATIONS

Proposed facilities	Pipe diameter (inches)	Map lengths (miles)[1]	State	County	Towns or cities
Champlain					
Mainline	24	27.5	VT	Franklin	Highgate, Swanton, St. Albans, Fairfield, Fairfax.
Mainline	24	27.8	VT	Chittenden	Westford, Essex, Williston, St. George, Hinesburg.
Mainline	24	30.7	VT	Addison	Monkton, New Haven, Middlebury, Salisburg, Leicester.
Mainline	24	38.3	VT	Rutland	Brandon, Pittsford, Rutland, Clarendon, Shrewsbury, Mt. Holly.
Mainline	24	21.9	VT	Windsor	Ludlow, Cavendish, Chester, Springfield.
Mainline	24	2.6	VT	Windham	Rockingham.
Mainline	24	5.2	NH	Sullivan	Charlestown, Langdon.
Mainline	24	36.1	NH	Cheshire	Walpole, Alstead, Surry, Gilsum, Keene, Roxbury, Swanzey, Marlboro, Troy, Fertxwilliam, Rindge.
Mainline	24	56.8	MA	Worcester	Winchendon, Ashburnham, Westminster, Fitchburg, Leominster, Sterling, Lancaster, Bolton, Berlin, Northborough, Shrewsbury, Westborough, Grafton, Upton, Milford.
Mainline	24	1.6	MA	Norfolk	Medway.
		248.5			
Pelham Branch	10	5.6	MA	Worcester	Sterling, Lancaster.
Pelham Branch	10	22.1	MA	Middlesex	Shirley, Groton, Pepperell, Dunstable, Tyngsborough.
		27.7			
Berkshire	10	37.1	VT	Windham	Rockingham, Westminster, Putney, Dummerston, Brattleboro, Guilford.
Berkshire	10	17.7	MA	Franklin	Bernardston, Leyden, Colrain, Shelburne, Deerfield.
		54.8			
Colrain Branch	10	1.2	MA	Franklin	Leyden, Colrain.
		1.2			
Nashua Branch	8	2.6	MA	Middlesex	Dunstable.
Middlebury Station 4000 HP of new compression.			VT	Addison	(near) Middlebury.
Algonquin					
Loop	12	0.9	CT	New Haven	Waterbury, Naugatuck.
Loop	36	6.1	CT	Middlesex	Cromwell.
			CT	Hartford	Berlin.
Loop	36	8.4	CT	Tolland	Coventry, Andover, Hebron.
			CT	Hartford	Glastonbury.
Lateral	24	3.6	RI	Providence	East Providence, Providence.
Loop	16	2.1	RI	Newport	Tiverton.
Lateral	20	11.0	MA	Bristol	Dighton, Swansea, Somerset.
Loop	16	2.0	MA	Plymouth	Brockton.
			MA	Norfolk	Avon.
Loop	36	7.5	MA	Norfolk	Medway, Medfield, Millis.
		41.6	MA	Middlesex	Sherborn.
Mendon Station 12,600 HP of new compression.			MA	Worcester	Mendon.

[1] Scaled from U.S. Geological Survey 7.5-minute-series topographic maps. Actual length of pipeline to be installed would be slightly larger due to terrain relief.

The FERC will be the lead Federal agency and will produce an EIS satisfying the requirements of the National Environmental Policy Act.

Outline of Current Environmental Issues

The EIS will address the environmental concerns that have been and will be identified by FERC staff, interveners, other Federal and state agencies, and individuals who respond to notices on this project. These issues include, but are not limited to:

Land Use—Impact on homes, future development, and public recreation areas.
—Impact on nature preserves, parks, public lands, etc.
Aesthetics—Affect of appearance of ROW and above-ground facilities on neighborhoods and scenic areas.
Pipeline Safety—Possibility of pipeline rupture.
—Blasting in populated areas.
Cultural Resources—Effect of the project on properties listed on or eligible for the National Register of Historic Places.
Water Resources—Effects of construction on potable water supplies.
—Excavation of stream sediments contaminated by toxic substances.
Wildlife—Impact on fisheries.
—Impact on state and federally listed threatened and endangered species.
Vegetation—Impact on wetlands.
—Short- and long-term effects on vegetation from clearing, seeding,

and right-of-way management.
Soils & Geology—Erosion control and revegetation.
—Effects on crop production and farmland.
—Effects of blasting and geologic hazards.
—Impact on exploitable mineral resources.
Air and Noise—Impact of additional compression on air quality and noice levels.
PCB's—Removal and disposal of facilities contaminated by PCB's.
Alternatives—Pipeline route variations and alternative system designs.

Alternative sites, route modifications, and specific mitigating measures will also be considered in the EIS. After comments from this notice are received and analyzed and the various issues are investigated, the staff will publish a draft EIS (DEIS) entitled "The Champlain Pipeline Project."

Cooperating Agencies

The following Federal agencies are requested to indicate whether they wish to be cooperating agencies in the preparation of the DEIS:

Advisory Council on Historic Preservation
Department of Agriculture:
Soil Conservation Service
Department of Commerce:
National Oceanic and Atmospheric Administration
Department of Defense:
U.S. Army Corps of Engineers
Department of Energy
Department of the Interior:
U.S. Fish and Wildlife Service
U.S. Geological Survey
National Park Service
Department of State
Department of Transportation:
Federal Highway Administration
Office of Pipeline Safety
Environmental Protection Agency

These or any other agencies desiring cooperating agency status should send a request describing how they would like to be involved to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

The request should reference Docket Nos. CP89–646–000, CP89–654–000 and CP89–661–000 and should be received by March 31, 1989. Additional information, including detailed maps of limited areas of the proposed routes, may be obtained from the FERC project manager identified at the end of this notice.

Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agency. Cooperating agencies are also welcome to suggest format and content modifications to facilitate ultimate adoption of the EIS; however, the lead agency will decide what modifications will be adopted in light of production constraints.

Comment and Scoping Procedure

Public scoping meetings will be held in March at the following locations:

Date	Time	Location
Mar. 21, 1989....	7:00 p.m.....	Waltz Lecture Hall, Keene State College, 229 Main Street, Keene, NH 03431.
Mar. 22, 1989....	7:00 p.m.....	Centre Ballroom, Holiday Inn, Route 7, S. Main Street, Rutland, VT 05701.
Mar. 23, 1989....	7:00 p.m.....	Fitchburg Public Library Auditorium, 610 Main Street, Fitchburg, MA 01420.

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impacts which they believe should be addressed in the DEIS. Anyone who would like to make an oral presentation at the meeting should contact the FERC project manager identified below to have their name placed on the speakers list. Priority will be given to persons representing groups. A second speakers list will be available at the public meeting. A transcript will be made of the meeting and coments will be used to help set the scope of the DEIS.

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, parties in this proceeding, and other interested individuals. *Additional information about the te project, including a description of construction procedures and a general overview map, was also mailed to everyone on the environmental document mailing list. Detailed maps of the proposed route have been provided to administrative officials of each affected town identified in Table 1.*

Written comments are also welcome to help identify significant issues or concerns related to the proposed action, to determine the scope of issues, including alternatives that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues would contain supporting documentation and rationale. Written comments must be filed on or before March 31, 1989, reference Docket Nos. CP89–646–000, CP89–654–000, and CP89–661–000, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the comments should also be sent to the FERC project manager identified below.

The DEIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties in this proceeding. A 45-day comment period will be allotted for review and comment on the DEIS.

Any person may file a motion to intervene on the basis of the Commission staff's DEIS (18 CFR 380.10(a) and 385.214). After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a final EIS (FEIS) will then be published by the staff and distributed. The FEIS will contain the staff's responses to comments received on the DEIS.

Additional information about the proposal is available from Mr. Lonnie Lister, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, or call (202) 357–9021 or FTS 357–9021.

Lois D. Cashell,

Secretary.

[FR Doc. 89–4106 Filed 2–22–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–634–000 and CP89–815–000; CP89–629–000]

Iroquois Gas Transmission System) et al.; Intent To Prepare a Draft Environmental Impact Statement for the Proposed Iroquois/Tennessee Pipeline Project and Request for Comments on Its Scope [1]

February 17, 1989.

Introduction

On January 17, 1989, Iroquois Gas Transmission System (Iroquois) and

[1] The FERC originally issued a Notice of Intent to Prepare an EIS for the Iroquois Project on September 3, 1986. The route of the main Iroquois system is substantially the same (except that the southern New York alternative is now the proposal). The relationship of Iroquois with Tennessee and with the Champlain and ANR proposals is new and is an outcome of the settlement proceedings at the FERC. Any comments filed with regard to the environmental issues on the original Iroquois route need not be repeated or refiled in response to this notice.

Tennessee Gas Pipeline Company (Tennessee) filed applications before the Federal Energy Regulatory Commission (FERC or Commission) in the above-referenced dockets, under section 7 of the Natural Gas Act, for authorization to construct facilities and transport up to 533,900 Mcfd (thousands of cubic feet per day) of Canadian natural gas received from TransCanada PipeLines Limited. The gas would be delivered to local distribution companies (LDC's) and cogeneration customers in New York, New Jersey and Connecticut. Iroquois would also deliver gas to Tennessee near Wright, New York and Stratford, Connecticut, and to Algonquin Gas Transmission Company (Algonquin) near Brookfield, Connecticut for redelivery to certain LDC's, cogeneration and power generation customers in Connecticut, Massachusetts, New Hampshire, and Rhode Island. An amended application was filed by Iroquois for a Presidential permit for construction, operation, maintenance, and connection of the proposed facilities at the international boundary between the United States and Canada. Tennessee has also filed an application before the FERC to transport 243.2 MMcf/d of Canadian gas received from Iroquois for delivery to certain LDC's and cogeneration customers in Massachusetts, Connecticut, New Hampshire, New York and Rhode Island, and 74.5 MMcf/d of domestic gas for a New England power generator and 2.0 MMcf/d for an LDC customer of Champlain Pipeline Company (Champlain).

As shown in Table 1, the Iroquois/Tennessee Pipeline Project consists of two segments. The first segment, proposed by Iroquois, is the construction of a new, 369.4-mile pipeline system of 30-inch and 24-inch-diameter pipe from the U.S./Canada border near Waddington, New York, extending through New York and Connecticut, across Long Island Sound and terminating at facilities of the Long Island Lighting Company (LILCO) near South Commack, New York.

TABLE 1.—IROQUOIS/TENNESSEE PIPELINE PROJECT FACILITY LOCATIONS

Proposed facilities	Pipe diameter (inches)	Approximate length [1] miles	State	County	Cities or towns
IROQUOIS					
Mainline	30	52.8	NY	St. Lawrence	Waddington, Lisbon, Canton, DeKalb, Hermon, Edwards, Pitcairn.
Mainline	30	54.5	NY	Lewis	Diana Croghan, New Bremen, Watson, Grieg, Turin, West Turin, Leyden.
Mainline	30	18.3	NY	Oneida	Boonville, Steuben, Remsen, Trenton.
Mainline	30	33.9	NY	Herkimer	Russia, Newport, Norway, Fairfield, Salisbury, Manheim, Danube.
Mainline	30	23.9	NY	Montgomery	Minden, Canajoharie, Root, Charleston.
Mainline	30/24	11.7	NY	Schoharie	Carlisle, Esperance, Schoharie, Wright.
Mainline	24	2.0	NY	Schenectady	Duanesburg.
Mainline	24	18.8	NY	Albany	Knox, Berne, Westerlo.
Mainline	24	16.3	NY	Greene	Greenville, New Baltimore, Coxsackie, Athens.
Mainline	24	15.5	NY	Columbia	Greenport, Livingston, Clermont.
Mainline	24	38.9	NY	Dutchess	Milan, Clinton, Pleasant Valley, Lagrange, Union Vale, Dover.
Mainline	24	8.8	NY	Suffolk	Huntington, Smithtown.
Mainline	24	10.9	CT	Litchfield	New Milford, Bridgewater.
Mainline	24	33.5	CT	Fairfield	Sherman, Brookfield, Newton, Monroe, Shelton, Stratford.
Mainline	24	2.9	CT	New Haven	City of Milford.
Mainline	24	26.7	CT, NY	Long Island Sound	
		369.4			
TENNESSEE					
Loop	36	13.8	PA	Mercer	Jefferson, Cool Spring, Jackson, Worth.
Loop	36	11.9	PA	Forest	Jenks, Howe.
Loop	36	18.2	NY	Ontario	Hopewell, Phelps.
			NY	Seneca	Waterloo, Seneca Falls.
Loop	36	11.0	NY	Onandaga	Lafayette, Pompey.
Loop	36	9.0	NY	Herkimer	Winfield.
			NY	Otsego	Richfield, Columbia.
Loop	36	16.41	NY	Schoharie	Schoharie, Wright, Knox.
			NY	Albany	Berne, New Scotland.
Loop	36	25.11	NY	Columbia	Chatham, New Lebanon, Canaan.
			MA	Berkshire	Richmond, Stockbridge, Lee, Tyringham.
Loop	30	10.1	MA	Worchester	Sutton, Northbridge, Grafton, Upton.
Loop	30	2.1	NJ	Sussex	Wantage.
		117.6			
Blackstone Lateral	24	[2] 9.6	MA	Worcester	Upton, Hopedale, Mendon.
Concord Lateral	12	4.5	NH	Merimack	Allenstown, Pembroke, Concord.
Haverhill Lateral	12	6.1	MA	Essex	Methuen, Haverhill.
Wallingford Lateral	12	[2] 3.2	CT	New Haven	Cheshire.
Springfield Lateral	10	0.1	MA	Hamden	Agawam.
		23.5			
North Haven Ext.	16	11.4	CT	New Haven	Hamden, Cheshire, Wallingford, North Haven.
Lincoln Extension	10	2.3	RI	Providence	Lincoln, Smithfield.
		13.7			
Station 245-2100 HP Compressor Addition.			NY	Herkimer	Winfield.
Station 254-3500 HP Compressor Addition.			NY	Columbia	Nassau.

TABLE 1.—IROQUOIS/TENNESSEE PIPELINE PROJECT FACILITY LOCATIONS—Continued

Proposed facilities	Pipe diameter (inches)	Approximate length [1] miles	State	County	Cities or towns
Station 261-3300 HP Compressor Addition (1650 HP is replacement).			MA	Hamden	Agawam.
New Compressor Station—1000 HP.			MA	Worcester	Mendon.

[1] Scaled from U.S. Geological Survey 7.5-minute-series topographic maps. Actual length of pipeline to be installed would be slightly larger due to terrain relief.
[2] Replacement pipeline.

The second segment, proposed by Tennessee, is the construction of 117.6 miles of mainland loop, 23.5 miles of lateral loops and replacement pipe, 13.7 miles of new pipeline extensions and 9,900 horsepower of compression in Pennsylvania, New Hampshire, New Jersey, Rhode Island and Massachusetts on its existing mainline system.[2] As described below, other projects have been filed to serve the Northeast. These include facilities proposed by Algonquin to carry out additional transportation services for Iroquois, Champlain and ANR Pipeline Company (ANR). The Algonquin proposal involves about 41 miles of pipeline looping in eight segments and a new compressor station in the states of Massachusetts, Connecticut and Rhode Island. Since the majority of the gas which Algonquin transports is related to the Champlain Pipeline Project, those facilities are being discussed in the *Notice of Intent to Prepare an Environmental Impact Statement* (EIS) for that project. The Iroquois draft environmental impact statement will include a discussion of the related Algonquin facilities as appropriate.

The proposal filed by ANR and Champlain to serve the Northeast will be discussed in separate environmental documents.

Concurrent with this notice, a separate notice for the Champlain Pipeline Project is being issued. Anyone affected by both projects, including Federal, state and local entities, will be sent both notices. Anyone else can request a copy of the other notice by contacting the FERC project manager.

Approval of the Iroquois/Tennessee Pipeline Project would likely result in the construction of additional facilities by LDC's and other end users. These include a total of approximately 18 miles of small diameter pipeline near Poughkeepsie and Huntington, New York, and 10 new or modified cogeneration and electric power plant facilities.

Comments are requested on the specific environmental issues which exist at any of the sites where non-jurisdictional facilities are proposed. If no issues are raised and the facilities have been approved or are being reviewed at the state or local level, or there are no direct tie-ins to the interstate pipeline network, the Commission staff intends to limit its environmental review. In this case, the review would primarily address the potential indirect effects on endangered species and cultural resources.

Notice of Intent

Notice is hereby given that the staff of the FERC has determined that approval of the Iroquous/Tennessee Pipeline Project proposed by Iroquois and Tennessee would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 380.6(a)(3) of the Commission's Rules of Practice and Procedure, 18 CFR 380.6(a)(3), and EIS will be prepared.

The FERC will be the lead Federal agency in the preparation of an EIS satisfying the requirements of the National Environmental Policy Act.

Outline of Current Enviromental Issues

The EIS will address the environmental concerns that have been and will be identified by the FERC staff, interveners, other Federal and state agencies, and individuals who have already written in response to earlier notices on segments of this project. These issues include, but are not limited to:

Land Use—Impact on homes, future development, and public recreation areas.
—Impact on nature preserves, parks, public lands, etc.
Aesthetics—Effect of appearance of ROW and above-ground facilities on neighborhoods and scenic areas.
Pipeline Safety—Possibility of pipeline rupture.
—Blasting in populated areas.
Cultural Resources—Effect of the project on properties listed on or eligible for the National Register of Historic Places.
Water Resources—Effects of construction on potable water supplies.
—Excavation of stream sediments contaminated by toxic substances.
—Crossing of Long Island Sound.
Wildlife—Impact on fisheries.
—Impact on state and federally listed threatened and endangered species.
Vegetation—Impact on wetlands.
—Short- and long-term effects on vegetation from clearing, seeding, and right-of-way management.
Soils & Geology—Erosion control and revegetation.
—Effect on crop production and farmland.
—Proximity of bedrock and the effects of blasting and geologic hazards.
—Impact on exploitable mineral resources.
Air and Noise—Impact of additional compression on air quality and noise levels.
PCB's—Removal and disposal of facilities contaminated by PCB's.
Alternatives—Pipeline route variations and alternative system designs.

Alternative sites, route modifications, and specific mitigating measures will also be considered in the EIS. After comments from this notice are received and analyzed and the various issues are investigated, the Commission staff will publish a draft EIS (DEIS) entitled "The Iroquois/Tennessee Pipeline Project."

Cooperating Agencies

The following Federal agencies are requested to indicate whether they wish to be cooperating agencies in the preparation of the DEIS:

Advisory Council on Historic Preservation

Department of Agriculture:

[2] A pipeline loop is a segment of pipeline which is installed usually adjacent to an exising pipeline and connected to it at both ends. The loop allows more gas to be moved through the pipeline system at the location in which it is installed.

Soil Conservation Service
Department of Commerce:
National Oceanic and Atmospheric Administration
Department of Defense:
U.S. Army Corps of Engineers
Department of Energy
Department of the Interior:
U.S. Fish and Wildlife Service
U.S. Geological Survey
National Park Service
Department of State
Department of Transportation:
Federal Highway Administration
Office of Pipeline Safety
Environmental Protection Agency

These agencies or any other agencies desiring cooperating agency status should send a request describing how they would like to participate to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

The request should reference Docket Nos. CP89-634-000, CP89-629-000 and CP89-815-000, and should be received by March 31, 1989. Additional information, including detailed maps of limited areas of the proposed routes, may be obtained from the FERC project manager identified at the end of this notice.

Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agency. Cooperating agencies are also welcome to suggest content modifications to facilitate ultimate adoption of the EIS. However, the lead agency will decide what modifications will be adopted in light of production constraints.

Comment and Scoping Procedure

Public scoping meetings will be held on March 15 and 16, 1989, at the following locations:

Date	Time	Location
Mar. 15, 1989.....	7:00 p.m.	Squire Room, Albany Ramada Inn, 1228 Western Avenue, Albany, NY 12203.
Mar. 16, 1989.....	7:00 p.m.	Danbury High School, 43 Clapboard Road, Danbury, CT 06810.

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impacts which they believe should be addressed in the DEIS. Persons who would like to make oral presentations at the meeting should contact the FERC project manager identified below to have their names placed on the speakers list. Priority will be given to those persons representing groups. A second speakers list will be available at the public meeting. A transcript will be made of the meeting and comments will be used to help set the scope of the DEIS.

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, parties in this proceeding, and other interested individuals. *Additional information about the project, including a description of construction procedures and a general map, has been mailed to everyone on the environmental document mailing list. Detailed maps of the proposed routes have been provided to administrative officials of each affected town identified in Table 1.*

Written comments are also welcome to help identify significant issues or concerns related to the proposed action, to determine the scope of issues, including alternatives, that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. Unless specific updates are required, those individuals/parties which have previously submitted comments on environmental issues need *not* file new comments. All comments on specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before March 31, 1989, reference Docket Nos. CP89-634-000, CP89-629-000 and CP89-815-000, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the comments should also be sent to the FERC project manager identified below.

The DEIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties in this proceeding. A 45-day comment period will be allotted for review and comment on the DEIS.

Any person may file a motion to intervene on the basis of the staff's DEIS (18 CFR 380.10(a) and 385.214). After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a final EIS (FEIS) will then be published by the staff and distributed. The FEIS will contain the Commission staff's responses to comments received on the DEIS.

Additional information about the proposal is available from Mr. James P. Daniel, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, or call (202) 357-5364 or FTS 357-5364.

Lois D. Cashell,
Secretary.

[FR Doc. 89-4107 Filed 2-22-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-3810-001 et al.]

Sun Exploration and Production Co. et al; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

February 17, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 1, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and Location	Description
G-3810-001, D, Jan. 30, 1989.	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221.	El Paso Natural Gas Company, Fullerton Field, Andrews County, Texas.	Assigned 12-21-88 to Amoco Production Company.
G-3812-002, D, Feb. 1, 1989	Sun Exploration and Production Company	El Paso Natural Gas Company, Slaughter Field, Hockley County, Texas.	Assigned 10-1-88 to Amoco Production Company.
G-3884-000, D, Jan. 30, 1989.	Sun Exploration and Production Company	Tennessee Gas Pipeline Company, Edinburg Field, Hidalgo County, Texas.	Assigned 12-30-88 to Mobil Producing Texas and New Mexico Inc.
G-5324-000, D, Jan. 19, 1989.	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Lone Star Gas Company, a Division of ENSERCH Corporation, Sholem Alechem Field, Carter County, Oklahoma.	Assigned 11-1-88 to Maynard Oil Company.
G-6619-002, D, Jan. 30, 1989.	Sun Exploration and Production Company	El Paso Natural Gas Company, Levelland Field, Hockley County, Texas.	Assigned 12-21-88 to Amoco Production Company.
G-6629-002, D, Jan. 6, 1989	Sun Exploration and Production Company	Transcontinental Gas Pipeline Corporation, North Sun Field, Starr County, Texas.	Assigned 12-8-88 to Fredonia Resources, Inc.
G-20020-000, D, Dec. 19, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Tennessee Gas Pipe Line Company, Grand Isle Area (South Timbalier Bay Area), Offshore Louisiana.	Assigned 10-1-87 to Chevron U.S.A., Inc.
CI61-1403-001, D, Jan. 19, 1989.	Texaco Producing Inc.	El Paso Natural Gas Company, Langlie Mattix Field, Lea County, New Mexico.	Assigned 10-1-88 to Brothers Production Company.
CI62-539-000, Jan. 23, 1989	Exxon Corporation, P.O. Box 2180, Houston, TX 77252-2180.	El Paso Natural Gas Company, Sand Hills Plant, Crane County, Texas.	Application to add a delivery point.
CI63-459-002, D, Nov. 18, 1988.	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253.	ANR Pipeline Company, Quinlan N.W. Field, Woodward County, Oklahoma.	Assigned 9-30-88 to Mesa Operating Limited Partnership
CI64-1065-000, D, Jan. 9, 1989.	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252.	United Gas Pipe Line Company, Normanna Field, Bee County, Texas.	Assigned 1-1-88 to Fina Oil and Chemical Company.
CI65-1000-000, D, Jan. 23, 1989.	Chevron U.S.A. Inc.	Panhandle Eastern Pipe Line Company, Frantz Field, Ochiltree County, Texas.	Assigned 1-1-89 to OTC Petroleum Corporation.
CI66-176-004, D, Dec. 14, 1989.	Texaco Producing Inc.	Arkla Energy Resources, a division of Arkla, Inc., Stanley Wright Unit, Haskell County, Oklahoma.	Assigned 12-1-87 to William Stuart Price.
CI66-332-001, D, Dec. 14, 1988.	Chevron U.S.A., Inc.,	Tennessee Gas Pipeline Company, West Delta 52, Offshore, Louisiana.	Assigned 10-1-87 to Alliance Operating Corporation.
CI68-621-006, D, Jan. 3, 1989.	Tenneco Oil Company	Tennessee Gas Pipeline Company, Heyser Field, Calhoun and Victoria Counties, Texas.	Assigned 1-1-88 to P.F. Barnhart, *et al.*, and Fina Oil and Chemical Company.
CI70-40-000, D, Jan. 30, 1989.	Chevron U.S.A., Inc.	Panhandle Eastern Pipe Line Company, Peek South Field, Roger Mills County, Oklahoma.	Assigned 9-9-88 to Union Oil Company of California.
CI70-841-000, Jan. 23, 1989	Exxon Corporation	El Paso Natural Gas Company, Sand Hills Plant, Crane County, Texas.	Application to add a delivery point.
CI74-528-033, Jan. 23, 1989	Exxon Corporation	El Paso Natural Gas Company, Sand Hills Plant, Crane County, Texas.	Application to add a delivery point.
CI76-222-001, D, Jan. 23, 1989.	Chevron U.S.A., Inc.	Northern Gas Products, Hansford North Field, Hansford County, Texas.	Assigned 1-1-89 to OTC Petroleum Corporation.
CI76-645-001, D, Jan. 13, 1989.	Tenneco Oil Company	Colorado Interstate Gas Company, Keyes Field, Cimarron County, Oklahoma.	Assigned 7-8-86 to Mesa Operating Limited Partnership.
CI77-307-003, D, Jan. 23, 1989.	Chevron U.S.A., Inc.	Williams Natural Gas Company, Alpar Field, Hempill County, Texas.	Assigned 1-1-89 to Shannon Energy Corporation.
CI88-636-001, D, Jan. 25, 1989.	Sun Exploration Production Company	El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico.	Assigned 11-30-88 to Hal J. Rasmussen and The Williams Partnership.
CI89-179-000, (CI62-159, B, Dec. 15, 1988.	Tenneco Oil Company	Texas Eastern Transmission Corporation, Bomba Field, Goliad County, Texas.	Lease surrendered. Other interests assigned 9-26-66 to Piney Point Petroleums.
CI89-181-000, D, Dec. 15, 1988.	Houston Oil and Minerals Corporation, c/o Tenneco Oil Company.	Florida Gas Transmission Company, Napoleonville Field, Assumption Parish, Louisiana.	Assigned 3-13-86 to K & H Resources.
CI89-204-000, (G-16867), B, Dec. 15, 1988.	Tenneco Oil Company	United Gas Pipe Line Company, Corpus Channel Field, Nueces County, Texas.	Leases surrendered and/or expired. Other interests assigned 12-1-66 to Piney Point Petroleums.
CI89-216-000, (CI72-175), D, Jan. 9, 1989.	Tenneco Oil Company	United Gas Pipe Line Company, Cotton Valley Field, Webster Parish, Louisiana.	Assigned 12-1-87 to Marathon Oil Company.
CI89-217-000, (CI64-1048), D, Jan. 9, 1989.	Tenneco Oil Company	United Gas Pipe Line Company, Cotton Valley Field, Webster Parish, Louisiana.	Assigned 12-1-87 to Marathon Oil Company.
CI89-219-000 (CI64-1024), D, Jan. 9, 1989.	Tenneco Oil Company	United Gas Pipe Line Company, Cotton Valley Field, Webster Parish, Lousiana.	Assigned 12-1-87 to Marathon Oil Company.
CI89-220-000, (CI64-1042), D, Jan. 9, 1989.	Tenneco Oil Company	United Gas Pipe Line Company, Cotton Valley Field, Webster Parish, Louisiana.	Assigned 12-1-87 to Marathon Oil Company.
CI89-247-000, (CI73-25), A, Jan. 23, 1989.	BHP Petroleum (Americas) Inc. 5847 San Felipe Suite 3600 Houston, TX 77057.	Transcontinental Gas Pipe Line Company, Block 16 Field, Vermilion Parish, Louisiana.	Application for a certificate to cover a sale previously covered by the operator, Fina Oil and Chemical Company.
CI89-248-000, (CI68-1397), A, Jan. 23, 1989.	BHP Petroleum (Americas) Inc	Transcontinental Gas Pipe Line Company, Block 16 Field, Vermilion Parish, Louisiana.	Application for a certificate to cover a sale previously covered by the operator, Fina Oil and Chemical Company.
CI89-249-000, (CI76-209), (CI76-379), E, Jan. 23, 1989.	Mesa Operating Limited, Partnership, P.O. Box 2009, Amarillo, TX 79189.	Natural Gas Pipeline Company of America, Trunkline Gas Company, East Cameron Blocks, 322 and 323, Offshore, Louisiana.	Acreage acquired 4-1-88 from Alliance Operating Corporation which acquired the acreage from Phillips Petroleum Company.
CI89-250-000, A, Jan. 23, 1989.	Phillips Petroleum Company, 990-G Plaza Office Building, Bartlesville, OK 74004.	Mountain Fuel Resources, Inc., Bridger Lake Area, Summit County, Utah, and Uinta County, Wyoming.	Application to initiate sales under a contract dated 8-1-69.

Docket No. and date filed	Applicant	Purchaser and Location	Description
CI89-264-000, (CI86-366-000), B, Jan. 27, 1989.	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102.	Northern Natural Gas Company, Division of Enron Corp., Galveston Block 144-L, Offshore Texas.	Reserves depleted, wells being plugged, lease to expire.
CI89-265-000, (CI67-1079), B, Jan. 27, 1989.	BHP Petroleum Company Inc., 5847 San Felipe, Suite 3600, Houston, TX 77057.	Transwestern Pipeline Company, Mendota Field, Hemphill County, Texas.	Certain acreage assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.* All other leases expired.
CI89-266-000, (G-10287), D, Jan. 27, 1989.	BHP Petroleum Company Inc	Arkla Energy Resources, a division of Arkla, Inc., Ruston Field, Lincoln Parish, Louisiana.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.*
CI89-267-000, (CI73-89), D, Jan. 27, 1989.	BHP Petroleum (Americas) Inc	Panhandle Eastern Pipe Line Company, South Greenough Field, Beaver County, Oklahoma.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.*
CI89-268-000, (CI75-490), D, Jan. 27, 1989.	BHP Petroleum (Americas) Inc	Northwest Pipeline Corporation, Otero Gallup Field, Rio Arriba County, New Mexico.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.*
CI89-269-000, (CI78-757), D, Jan. 27, 1989.	BHP Petroleum Company Inc	El Paso Natural Gas Company, Burton Field, Eddy County, New Mexico.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.*
CI89-270-000, (CI72-809), D, Jan. 27, 1989.	BHP Petroleum (Americas) Inc	Williams Gas Supply Company, South Blanco and Tapacito Pictured Cliffs Fields, Rio Arriba County, New Mexico.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.*
CI89-271-000, (CI61-1777), D, Jan. 27, 1989.	BHP Petroleum Company Inc	Northern Natural Gas Company, Division of Enron Corp., Fincham Field, Beaver County, Oklahoma.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.*
CI89-272-000, (CI72-826), D, Jan. 27, 1989.	BHP Petroleum (Americas) Inc	El Paso Natural Gas Company, West Kutz Pictured Cliffs-Fruitland Field, San Juan County, New Mexico.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.*
CI89-273-000, (CI73-246), D, Jan. 27, 1989.	BHP Petroleum (Americas) Inc	Questar Pipeline Company, Kinney and Pioneer Fields, Sweetwater County, Wyoming.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.*
CI89-274-000, (CI72-849), D, Jan. 27, 1989.	BHP Petroleum (Americas) Inc	Northwest Pipeline Corporation, Otero Graneros Field, Rio Arriba County, New Mexico.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.*
CI89-275-000, (G-19965), D, Jan. 27, 1989.	BHP Petroleum Company Inc	Northern Natural Gas Company, Division of Enron Corp., Killebrew Field, Roberts County, Texas.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.*
CI89-276-000, (CI67-1160), B, Jan. 27, 1989.	BHP Petroleum Company Inc	Transwestern Pipeline Company, Worsham Bayer Field, Reeves County, Texas.	Certain acreage assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.* Other leases expired.
CI89-277-000, (G-5712), D, Jan. 27, 1989.	BHP Petroleum (Americas) Inc	Texas Eastern Transmission Corporation, Boyce Field, Goliad County, Texas.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.*
CI89-278-000, (G-15318), D, Jan. 27, 1989.	BHP Petroleum Company Inc	Transwester Pipeline Company, Worsham Bayer Field, Reeves County, Texas.	Assigned 11-1-88 to Prudential-Bache Energy Income Production Partnership VP-20, *et al.* and 6-1-87 to Bledsoe Petro Corporation.
CI89-279-000, (G-10546), F, Jan. 30, 1989.	Mesa Operating Limited Partnership	Colorado Interstate Gas Company, Mocane Field, Beaver County, Oklahoma.	Acreage acquired 12-1-87 from Tenneco Oil Company.

Filing code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 89-4115 Filed 2-22-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ER89-125-000 and ER89-66-000]

Canal Electric Co.; Initiation of Proceeding and Refund Effective Date

February 16, 1989.

Take notice that on February 14, 1989, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

Refund effective date: April 24, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4116 Filed 2-22-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP85-122-018 and RP87-30-022]

Colorado Interstate Gas Co.; Compliance Filing

February 16, 1989.

Take note that on February 13, 1989, Colorado Interstate Gas Company ("CIG") submitted a revised compliance filing in Docket Nos. RP85-122 and RP87-30.

CIG states that on January 17, 1989, it made a filing with the Federal Energy Regulatory Commission ("Commission") pursuant to the requirements of a November 29, 1988 Order Denying Appeal From Staff Action.

CIG states that upon further review of that filing it has determined that such filing did not reflect full and complete compliance with the relevant Commission orders and opinions and letter orders issued by the Director of the Office of Pipeline and Producer Regulations.

CIG states that this filing reflects compliance with the requirements of the Commission's Opinion Nos. 290 and 290-A, as well as the July 1, 1988 letter order and the November 29, 1988 Order Denying Appeal From Staff Action. According to CIG the instant tariff sheets reflect establishment of a Modified Fixed Variable form of rate design and make other rate design and tariff changes for prospective application.

CIG also states that the instant filing eliminates Rate Schedule PR-1 in its entirety for the locked-in period July 14, 1987 through August 3, 1988.

CIG also states that it has compiled with the requirement of Opinion Nos. 290 and 290-A that it eliminate its fixed

cost minimum commodity bill applicable to Natural Gas Pipeline Company of America.

CIG states that because various aspects to Opinion Nos. 290 and 290–A are pending judicial review CIG states that it reserves the right to modify the instant filing based upon the ultimate outcome of such pending judicial review or final Commission action.

Copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–4109 Filed 2–22–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88–201–007]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

February 16, 1989.

Take notice that on February 10, 1989, East Tennessee Natural Gas Company (East Tennessee) filed Second Substitute Thirteenth Revised Sheet No. 5 to its FERC Gas Tariff to be effective January 1, 1989.

East Tennessee states that the purpose of this filing is to comply with the February 1, 1989 Commission Order in this docket, in which East Tennessee was directed to credit United Cities with the excess purchases of Tennessee Virginia attributed to the month of December 1986, using the methodology proposed by United Cities.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–4110 Filed 2–22–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88–158–001]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

February 16, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on Feb. 10, 1989, tendered for filing the following tariff sheets:

First Revised Volume No. 1
Seventh Revised Sheet No. 54–A
Original Volume No. 2
Seventh Revised Sheet No. 53–C
Seventh Revised Sheet No. 78–C
Second Revised Sheet No. 468
First Revised Sheet No. 607

Great Lakes states that on May 25, 1988, the Commission issued an order in RP88–158–000, et al., suspending Great Lakes Gas Transmission Company's ("Great Lakes") Order No. 483 Compliance Filing to revise the PGA tariff clause contained in its FERC Gas Tariff and implement a revised PGA adjustment effective June 1, 1988, subject to refund and further Commission review.

Great Lakes states on Jan. 11, 1989 the Commission issued an order stating that upon subsequent review of the PGA tariff clause revisions Great Lakes failed to describe the calculation of the current PGA adjustment pursuant to § 154.302(o) of the Commission's Regulations. Great Lakes was directed to file revised tariff sheets within 30 days.

In compliance with the Commission's January 11, 1989, order Great Lakes is submitting the aforementioned tariff sheets.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 89–4111 Filed 2–22–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89–815–000]

Iroquois Gas Transmission System; Assignment of New Docket Number

February 16, 1989.

Take notice that on February 1, 1989, notice was issued of the January 17, 1989 filing by Iroquois Gas Transmission System for an amendment to an application for a Presidential Permit for the construction, operation, maintenance, and connection at the United States/Canadian international boundary of facilities for the importation of natural gas in Docket No. CP86–524–001.

The docket number assigned to that filing, CP86–524–001, *has been changed* to CP89–815–000. All filings made in connection with this application should reference the new docket number.

It should be noted that the Commission's order of January 12, 1989, in Docket No. CP87–451–016 advises all parties who have previously intervened in Docket No. CP87–451 and in other "open-season" dockets (including CP86–524–000) to file new interventions if they wish to become parties in this application.

Lois D. Cashell,

Secretary.

[FR Doc. 89–4159 Filed 2–22–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ89–1–46–004, RP86–165–004, RP86–166–004]

Kentucky West Virginia Gas Co.; Compliance Filing

February 17, 1989.

Take notice that on February 13, 1989, Kentucky West Virginia Gas Company

(Kentucky West) tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective March 15, 1989:

Original Sheet No. 8A
Original Sheet No. 8B
Original Sheet No. 10A
Original Sheet No. 10B

Kentucky West states that the foregoing tariff sheets are filed in compliance with the Commission's "Order On Rehearing" issued in the referenced proceedings on January 13, 1989, and in accordance with the mandate of the United States Court of Appeals for the Fifth Circuit, issued in *Kentucky West Virginia Gas Company vs. FERC*, 780 F.2d 1231 (5th Cir. 1986).

Kentucky West states that in compliance with the Commission's order, under such tariff sheets, it will bill its customers directly for the difference between (1) the amounts each such customer paid during the period in which Kentucky West was required to price certain of its company production at cost of service rather than Natural Gas Policy Act (NGPA) rates; and (2) the amounts each such customer would have paid if Kentucky West, during such time period, had not been denied the right to price its pipeline production at NGPA prices, plus interest calculated in accordance with the Commission's regulations.

Kentucky West states that its customers are given the option of paying the direct billing amounts either: (1) By a lump-sum payment to be made by May 1, 1989; or (2) in monthly installments of direct billing amounts, plus interest, to be paid over a period not to exceed eighty-four months. Customers have until April 14, 1989, to elect between the lump-sum or monthly installment payment method.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested State Commissions and upon each party on the service lists in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspections.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4155 Filed 2-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-97-002]

Pacific Gas and Electric Co.; Filing

February 16, 1989.

Take notice that on February 10, 1989, Pacific Gas and Electric Company (PG&E) on behalf of itself and the other Participants in the Western Systems Power Pool (WSPP) filed a motion for extension of experiment to extend the WSPP from May 1, 1989 to May 1, 1991.

In the motion, PG&E and the Participants state that additional time is needed to allow time for procedural matters related to the WSPP to be completed, and to avoid the discontinuation of a program which they assert appears to be very beneficial to the fourteen million customers served by theWSPP Participants while the fate of the WSPP is studied, debated and resolved. PG&E also contends that the additional time is needed so that two full years of consistent data can be collected by the WSPP.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4108 Filed 2-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-227-009]

Paiute Pipeline Co.; Filing

February 16, 1989.

Take notice that on February 10, 1989, Paiute Pipeline Company (Paiute) filed certain revised tariff sheets to its FERC Gas Tariff in compliance with the Commission's order issued January 31, 1989. Paiute points out that it has submitted three alternative sets of tariff sheets.

Paiute states that the first alternative set of tariff sheets retains the cost structure proposed in the original filing, which showed a conversion of 15 percent of the contract demand sales volumes for each of the three Paiute distribution customers to transportation volumes. Thus, the D-1 volumes reflect 85 percent and the R-1 volumes represent 15 percent of the total demand. D-2 and R-2 volumes are consistent with those set forth in its December 16, 1988 filing. The costs are those contained in the original rate filing of August 1, 1988.

Paiute states that the second alternative set of tariff sheets retains the D-1 and R-1 levels as set forth in Alternative One; however, Alternative two includes increases in D-2 volumes and the costs related thereto, primarily through costs associated with Account No. 858, (and concomitant decreases in R-2 volumes) resulting from the two Paiute customers' choice not to convert 15 percent of their sales requirements to transportation.

Paiute states that the third alternative set of tariff sheets reflects both the change in D-1 and R-1 volumes resulting from the two customer's choice not to convert to transportation and the change in D-2 and R-2 volumes resulting from such choice.

Paiute states that a copy of this filing has been served upon all parties on the service list on Docket Nos. TP88-227-000, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before February 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4112 Filed 2-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-58-015]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 17, 1989

Take notice that on February 13, 1989, Southern Natural Gas Company (Southern) tendered for filing certain tariff sheets.

Southern states that the proposed tariff filing is being made in compliance with Ordering Paragraph (C) of the Federal Energy Regulatory Commission's (Commission) order of January 27, 1989, in the above-captioned proceedings requiring Southern to refile both the settlement rates accepted by the January 27, 1989 order and the previously effective nonsettlement rates and to designate which rates are applicable to whom. Southern has indicated which sheets are applicable to persons supporting or not opposing the Base stipulating in these proceedings and which sheets are applicable to persons opposing that Stipulation.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedures (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before February 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4156 Filed 2-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL89-15-000]

Texas Utilities Electric Co. v. Central Power & Light Co., West Texas Utilities Co., Public Service Co. of Oklahoma and Southwestern Electric Power Co.; Filing

February 14, 1989.

Take notice that on February 6, 1989, Texas Utilities Electric Company (TU Electric) filed a complaint with the Commission against the above-named companies (hereafter the CSW Operating Companies). It is complaint TU Electric alleges that the CSW Operating Companies have violated the Federal Power Act, an order of the Commission issued January 27, 1987 in Docket Nos. ER82-545-000 *et al.*, and their agreement to abide by the terms of TU Electric's Settlement Tariff for the reservation of and payment for transmission service to, from and over certain High Voltage Direct Transmission Interconnections. TU Electric alleges that specifically the CSW Operating Companies have failed and refused to: (1) Reserve transmission capacity; (2) provide TU Electric with information necessary to complete and file Transmission Service Agreements as required by the January 27, 1987 order; and (3) compensate TU Electric in accordance with its Settlement Tariff, all in violation of the Settlement Tariff, the January 27, 1987 order and the Memorandum of Agreement adopted and approved by the Commission in the January 27, 1987 order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Complainant states that it has served copies of the complaint on the respondents. Answers to the complaint shall be due on or before March 16, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4114 Filed 2-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-55-041]

Transcontinental Gas Pipe Line Corp.; Compliance Tariff Filing

February 17, 1989.

Take notice that on January 23, 1989, Transcontinental Gas Pipe Line Corporation (Transco) filed in the captioned proceeding certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its Ferc Gas Tariff. The proposed effective dates of the revised tariff sheets are October 1, and November 1, 1987; January 1, February 1, and April 22, 1988.

Transco states that the purpose of the instant filing is to revise Transco's rates to reflect the cost allocation and rate design methodology approved for the Transco system by the Commission in Opinion Nos. 260 and 260-A issued in this docket on December 30, 1986 and August 19, 1987, respectively, as modified by subsequent Commission orders and letter orders of the Director, Office of Pipeline and Producer Regulation. In that regard, the instant filing is submitted in accordance with Ordering Paragraphs (B) and (C) of the Commission's order issued December 8, 1988 in Docket Nos. RP82-55-038 and RP87-7-007 wherein the Commission ordered Transco to file within forty-five days (i) revised tariff sheets which reflect the allocation of D-1 costs to its zones based on three-day peak dths or three-day peak dth-miles, as appropriate and (ii) revised tariff sheets reflecting the settlement cost of service in Docket No. RP87-7-030.

Transco further states that the base tariff rates in the revised tariff sheets proposed effective October 1, 1987 are based on the cost and volumetric determinants contained in Transco's November 24, 1987 cost of service settlement which was approved by the Commission's order issued July 22, 1988 in Docket No. RP87-7-030, *Transcontinental Gas Pipe Line Corporation*, 44 FERC ¶ 61.111 (1988) and are derived in accordance with the Opinion Nos. 260 and 260-A series of orders respecting cost allocation and rate design on the Transco system. Also included are revised tariff sheets to be effective subsequent to October 1, 1987 to take account of various tracking filings.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers, State Commissions and interested parties. In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before Feb. 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4156 Filed 2-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-11-004]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

February 17, 1989.

Take notice that on February 14, 1989, Trunkline Gas Company (Trunkline) tendered for filing the following tariff sheet to its FERC Gas Tariff Original Volume No. 1:

First Substitute Third Revised Sheet No. 21-Q

The proposed effective date of this revised sheet is November 28, 1988.

Trunkline states that the proposed tariff sheet is being filed in compliance with the Commission's November 25, 1988 Order, and the Commission's Letter Order, dated January 31, 1989 in the above-captioned proceeding accepting Trunkline's proposed recover of take-or-pay settlement costs under Order No. 500. Specifically, this revised tariff sheet eliminates the reference to Docket No. RP89-11-000.

Trunkline states that copies of the filing were sent to all of Trunkline's jurisdictional customers and interested state commissions, as well as the parties to the above-captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before February 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4158 Filed 2-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1864-005-Michigan, Wisconsin]

Upper Peninsula Power Co.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

February 17, 1989.

The license for the Bond Falls Project No. 1864 located on the Ontonagon River in Ontonagon and Gogebic Counties, Michigan, and Vilas County, Wisconsin expired on December 31, 1988. Pursuant to section 15(c)(1) of the Federal Power Act the statutory deadline for the submission of applications for relicense was December 24, 1987. An application for relicense has been filed as follows:

Project No.	Applicant	Contact
P-1864.....	Upper Peninsula Power Company, 616 Sheldon Avenue, Houghton, MI 49931.	Mr. Elio Argentati, Upper Peninsula Power Company, 616 Sheldon Avenue, Houghton, MI 49931.

The following dates and procedures will be used in processing the application.

Date	Action
Sept. 7, 1988..	Public notice of the application was issued.
Oct. 28, 1988.	Public notice of the application was reissued.
Mar. 15, 1989.	Applicant shall file Final Amendments to its application.
Apr. 15, 1989 .	Commission notifies applicant of the need for additional information, if any, and the date information is due.

Upon receipt of all additional information, public comments, and agency recommendations, the Commission will complete its environmental analysis pursuant to the National Environmental Policy Act, attempt to resolve any disputed fish and wildlife terms and conditions, and issue an order on the application.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4160 Filed 2-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-92-010 and RP88-263-006]

United Gas Pipe Line Co.; Filing

February 16, 1989.

Take notice that on February 7, 1989, United Gas Pipe Line Company (United) filed the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1988:

Second Revised Substitute Eighth Revised Sheet No. 7
Second Revised Substitute Sixth Revised Sheet No. 11
Revised Substitute Nineteenth Revised Sheet No. 23

United states that these tariff sheets correct an inadvertent error made in its January 6, 1989 compliance filing. Specifically, in Section 6.4 of each tariff sheet United added the phrase "in Section 6.1 and in Section 6.2 related to any interruption, curtailment or allocation order."

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before February 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4113 Filed 2-22-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Proposed Refund Procedures; Proposed Decision and Order

February 16, 1989.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $8.5 million, plus accrued interest, in crude oil overcharge funds obtained from Hood Goldsberry d/b/a Goldsberry Operating Company, Inc. (Case Number KEF-0118), Meeker and Company (Case Number KEF-0121), Calumet Industries, Inc. (Case Number KEF-0122), and Christmann and Welborn (Case Number KEF-0123). The OHA proposes to distribute these funds in accordance

with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days from the date of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a conspicuous reference to Case Number KEF–0118.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute crude oil overcharge funds obtained from Hood Goldsberry d/b/a/ Goldsberry Operating Company, Inc., Meeker and Company, Calumet Industries, Inc., and Christmann and Welborn. The funds are being held in interest-bearing escrow accounts pending distribution by the DOE.

The DOE proposes to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge funds are divided among the states, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Date: February 16, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Names of Firms: Hood Goldsberry, Meeker and Company, Calumet Industries, Inc., Christmann and Welborn

Dates of Filing: September 19, 1988, October 25, 1988, October 31, 1988, January 18, 1989

Case Numbers: KEF–0118, KEF–0121, KEF–0122, KEF–0123.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed four Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Hood Goldsberry d/b/a Goldsberry Operating Company, Inc. (Goldsberry), Meeker and Company (Meeker), Calument Industries, Inc. (Calumet) and Christmann and Welborn (Christmann). These four firms remitted a total of $8.5 million to the DOE.[1] An additional $1.6 million in interest has accrued on that amount as of January 31, 1989. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the four firms listed above, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). On April 10, 1987, the OHA issued a Notice setting forth generalized procedures and providing guidence to claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. 52 FR 11737. In that Notice, we stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of price controls and prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of

[1] Goldsberry remitted $433,562.81 to the DOE pursuant to Consent Order 641C00428, Meeker Paid $305,926.41 in accordance with Consent Order 6A0C00070, and Calument paid $659,289.68 in accordance with Consent Order N00S90139. Christmann remitted a total of $6,944,288.49 to the DOE pursuant to (1) a July 10, 1985 Judgement of the United States District Court for the Northern District of Texas, Lubbock Division, *Christmann & Welborn v. DOE*, No. CA–5–79–7; and (2) a Settlement Agreement between Christmann and the DOE in that same litigation, DOE Case Number 676C00102.

petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice. *See, e.g., New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988). These procedures have been approved by the United States District Court for the District of Kansas. Various states had filed a Motion with that court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,587 at 26,826 (D. Kan. 1987). The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 26,827. The states appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed Judge Theis' decision. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,606 (Temp. Emer. Ct. App. 1988).

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceedings that are the subject of the present determination. As noted above, $8.5 million in alleged crude oil violation amounts is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $1.7 million (plus interest) for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured persons. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims in this proceeding will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *MAPCO, Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations, are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of price controls. *See A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *New York Petroleum*, 18 DOE at 88,702–03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411 (1987), *reconsideration denied*, 16 DOE ¶ 85,494 (1987), *aff'd sub nom. In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. Dec. 7, 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($8.5 million) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.000004227 per gallon. We propose to adopt a deadline of October 31, 1989 for refund applications submitted pursuant to this determination.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in crude oil refund proceeding need not file another application; that application will be deemed to be filed in this proceeding as well. The volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $6.8 million, plus interest, be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive if these procedures are adopted is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by Hood Goldsberry d/b/a Goldsberry Operating Company, Inc., Meeker and Company, Calumet Industries, Inc. and Christmann and Welborn shall be distributed in accordance with the foregoing Decision.

[FR Doc. 89–4214 Filed 2–22–89; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures; Decision and Order

February 16, 1989.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $34,720,020.90 plus accrued interest, in alleged crude oil overcharge funds obtained from Wickett Refining Company (Case No. KEF–0099), Pennzoil Company (Case No. KEF–0104), Sun Company (Case No. KEF–0105), and Phillips Petroleum Company (Case No. KEF–0111). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for Refund submitted pursuant to this Decision must be filed in duplicate and postmarked no later than October 31, 1989, and should be addressed to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8018.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Wickett Refining Company, Pennzoil Company, Sun Company, and Phillips Petroleum Company.

The DOE has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986) (MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of crude oil price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

As the Decision and Order indicates, Applications for Refund may now be filed by injured purchasers of refined petroleum products. Applications must be filed in duplicate and postmarked no later than October 31, 1989. The specific information required in an Application for Refund is set forth in the Decision and Order. As we state in the Decision, any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date.

Date: February 16, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Names of Firms: Wickett Refining Company, Pennzoil Company, Sun Company, Phillips Petroleum Company

Dates of Filings: January 11, 1988, March 10, 1988, March 10, 1988, June 24, 1988

Case Numbers: KEF–0099, KEF–0104, KEF–0105, KEF–0111.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed four Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Wickett Refining Company, Pennzoil Company, Sun Company, and Phillips Petroleum Company. These four firms remitted a total of $34,720,020.90 to the DOE.[1] This Decision and Order establishes procedures for distributing these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from the five firms listed above, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty (80) percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided

[1] Wickett Refining Co. remitted $850,000 to the DOE pursuant to a June 9, 1987, Consent Order between Wickett and the DOE, Consent Order number NOOS90122Z; Pennzoil Company remitted $1,370,020.90 pursuant to a settlement approved on May 12, 1987, Consent Order Number NPNG00301Z; Sun Company remitted $2,500,000 pursuant to a Consent Order entered into on November 23, 1987, Consent Order Number CSNZ00000Z; and Phillips Petroleum Company remitted $30,000,000 pursuant to a settlement approved on April 4, 1988, Consent Order Number NPHE00601Z.

guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of the M.D.L. 378 settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell Oil*), and *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that Court, claiming that the OHA violated the Stripper Well Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, the court issued an Opinion and Order denying the States' Motion in its entirety. The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The Court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The States appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed the lower court's decision. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,606. (Temp. Emer. Ct. App. 1988)

II. The Proposed Decision and Order

On October 17, 1988, the OHA issued a Proposed Decision and Order establishing tentative procedures to distribute the alleged crude oil violation amounts obtained from Wickett Refining Co., Pennzoil Co., Sun Co., and Phillips Petroleum Co. 53 FR 43030 (October 25, 1988). The OHA tentatively concluded that the monies in those cases should be distributed in accordance with the MSRP and the April 1987 Notice. Pursuant to the MSRP, the OHA proposed to reserve initially 20 percent of the alleged crude oil violation amounts for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining 80 percent of the funds would be distributed to the states and federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the Proposed Decision and Order, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. Both Decisions stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 1987 Notice. Comments were solicited regarding the tentative distribution process set forth in the Proposed Decision and Order.

III. Discussion of the Comments Received

In response to the Proposed Decision and Order, the OHA received comments from Philip P. Kalodner, counsel for 6 electric utilities, 14 foreign-flag shipping companies, and 4 pulp and paper manufacturers. Mr. Kalodner's clients are all potential recipients of crude oil refunds. These comments consist of a 12 page brief originally filed by Mr. Kalodner in the OHA proceeding involving Salomon Inc., *et al.*, Case no. KEF–0109 *et al.* (the Salomon brief), and a five page supplemental brief. In these comments, Mr. Kalodner contends that the OHA should not distribute 80 percent of the alleged crude oil violation amounts to the states and federal government. According to Kalodner, such a distribution will preclude claimants from obtaining "their full direct restitutionary share of crude oil refunds." Salomon brief at 4. Kalodner claims that the 20 percent reserve is insufficient to satisfy all of the legitimate claims that have been or will be filed in these proceedings. Kalodner asserts that both the DOE and the states assured the United States District Court for the District of Kansas that the amount reserved for the claims process would be adequate to provide refunds for all successful claimants. "Having provided that assurance in order to obtain approval of the Court of the Final Settlement Agreement and the benefits to themselves, the States and the DOE are required by the doctrine of judicial estoppel to make good on that assurance." Salomon brief at 5.

Kalodner's arguments are not persuasive. The DOE could not, and did not, give assurances as to the precise level of restitution that would be afforded to claimants from the crude oil overcharge funds. Instead, the DOE agreed that it would apply existing Subpart V regulations and precedents to claims for crude oil overcharge funds. Accordingly, Kalodner's premise as to assurances given by the DOE is incorrect. It must be emphasized that neither the Subpart V refund regulations nor the Settlement Agreement addresses any particular formula OHA must employ when granting refunds from the claimants' 20 percent set-aside. In fact, that the DOE has considerable discretion in how to allocate available funds among claimants was fully endorsed by the district court and by TECA when they approved OHA's use of the "full parity" methodology to be used in paying claims. *See in Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323–24 (D. Kan. 1987); *In Re:* The *Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,606 at 26,927. (Temp. Emer. Ct. App. 1988) The court's determination upholding the full parity method severs the self-interested arguments of parties on both extremes. It defeats the challenge from the States, who sought to minimize the amount of refunds paid to Subpart V claimants from the 20 percent reserve, and it also defeats the attack from Kalodner's clients, who seek to increase their refunds by inflating the per-gallon

amount of refunds in Subpart V proceedings.[2]

Moreover, there is absolutely no evidence to support Kalodner's assertion that the 20 percent reserve will be insufficient to pay claimants. His argument is based on a pyramid of speculations and unsubstantiated allegations. For example, Kalodner contends that, given OHA's record of approval of refund cases, including those in which the States have filed comments, there will be essentially no disallowance of pending claims. Kalodner, in effect, assumes that the volumes claimed in the remaining refund applications will not significantly decrease through the OHA's analyses of those claims. Indeed, facts known today belie the validity of the "worst case scenario" raised by Kalodner.

Not all volumes submitted by claimants will prove to be valid, and volumes will decrease through the OHA analysis of those claims. For example, in *Borst Oil Corp.*, 17 DOE ¶ 85,232 (1988), we denied claims based on purchases of 747 million gallons by petroleum resellers that failed to prove they were injured by crude oil overcharges. In *Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988), we held that the States, in challenges to refund applications filed by foreign flag ocean carriers, have submitted information that rebutted the presumption that the carriers were injured by crude oil overcharges and shifted the burden of going forward with evidence back to the carriers. We therefore established a schedule for the submission of additional legal arguments and factual materials. It is unclear the extent to which those applications will be granted. There are thousands of other refund claims in which serious challenges have been raised. These disputes will have to be adjudicated before the magnitude of valid claims can be accurately determined. We therefore reject Kalodner's arguments regarding the sufficiency of the 20 percent set-aside.

Based upon the foregoing conclusions, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts subject to this determination in order to ensure that sufficient funds will be available for refunds to injured claimants. We will therefore adopt the procedures as proposed in the Proposed Decisions and Orders, and order the disbursement of 80 percent of the alleged crude oil violation amounts to the states and federal government.

[2] Mr. Kalodner also suggests in his comments that we add various amounts to the numerator of the volumetric formula in order to increase the size of refunds. These suggestions were previously considered and rejected in *Allerkamp*, 17 DOE at 88,174–175. Mr. Kalodner has presented no new arguments to justify a reconsideration of those issues in this determination.

IV. The Refund Procedures

A. Refund Claims

After considering the comments received, we have concluded that the $34,720,020.90 in alleged crude oil violation amounts covered by this Decision, plus the interest which has accrued on that amount, should be distributed in accordance with the curde oil refund procedures previously discussed. As noted earlier, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $6,944,004.18 (plus interest) for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured persons. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See MAPCO, Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *See Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of crude oil price controls. *See Tarricone*, 15 DOE at 88,893–96. The end-user presumption of injury is rebuttable, however, *Berry Holding Co.*, 16 DOE ¶ 85,405 at 88, 797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *See Tarricone*, 15 DOE at 88,896. They can, however, use econometric evidence of the type employed in the OHA Report on Stripper Well Overcharges. *See* 6 Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the settlement Agreement have waived their rights to apply for crude oil refunds under Subparts V. *See Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411, *reconsideration denied*, 16 DOE ¶ 85,494, (1987); *Sea-Land Service, Inc.*, 16 DOE ¶ 85,496 at 88,991 n.1 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts involved in this determination ($34,720,020.90) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *See Mountain Fuel*, 14 DOE at 88,868. This yield a volumetric refund amount of $0.00001718 per gallon.[3]

Refund applications submitted pursuant to this Decision must be postmarked no later than October 31, 1989, the deadline established in *World Oil Co.*, 17 DOE ¶ 85,568 (1988). As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application int he Subpart V crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

[3] The total volumetric refund amount approved in all proceedings finalized prior to and including *Amorient Petroleum Company, California* (Amorient) was $0.0008623945. *Amorient*, 18 DOE ¶ ——, No. KEF-0101 (February 3, 1989). When the volumetric amounts approved in *Lone Star Oil & Chemical*, 18 DOE ¶ ——, No. KEF-0106 (January 31, 1989), and this Decision are added to that amount, the current total per-gallon refund is $0.0008805397. This volumetric refund amount will be increased as additional crude oil violation amounts are received in the future.

To apply for a crude oil refund, a claimant should submit an Application for Refund. The application should contain all of the following information:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number, an indication whether the applicant is a corporation, the name and telephone number of a person to contract for any additional information, and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained its purchase volume figures and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns have waived any right it may have to receive a refund in these cases (i.e., by having executed and submitted a valid waiver pursuant to any one of the escrow accounts established pursuant to the Settlement Agreement in the Stripper Well Exemption Litigation);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e., that the applicant did not pass through the overcharges to its own customers); and

(8) If the applicant is a regulated utility, a certification that it will notify the appropriate regulatory authority of any refund received and that it will pass on the entirety of its refund to its retail customers.

All applications should be typed or printed and clearly labelled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application, which should be mailed to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the $34,720,020.90 involved in this Decision, or $27,776, 016.72 plus interest, should be disbursed in equal shares of the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate $27,776,016.72 and transfer one-half of that account, or $13,888,008.36, into an interest-bearing subaccount for the states, and one-half into an interest-bearing subaccount for the federal government. In the near future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states from their respective subaccount. This future Order is necessary to improve our ability to track the various disbursements to the states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share of ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

It is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Wickett Refining Company, Pennzoil Company, Sun Company, and Phillips Petroleum Company may now be filed.

(2) All applications submitted pursuant to paragraph (1) above must be filed in duplicate and postmarked no later than October 31, 1989.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, pursuant to Paragraphs (4), (5), and (6) below, all of the funds from the following subaccounts:

Wickett Refining Company, Account No. N00S90122Z

Pennzoil Company, Account No. NPNG00301Z

Sun Company, Account No. CSNZ00000Z

Phillips Petroleum Company, Account No. NPHE00601Z

(4) The Director of Special Accounts and Payroll shall transfer $13,888,008.36 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer the same account of funds as that indicated in paragraph (4) above into the subaccount "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $6,944,004.18 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 2," Number 999DOE008Z.

Date: February 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-4215 Filed 2-22-89; 8:45am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3525-6]

Review of Draft Ozone Staff Paper and Draft Supplement of Ozone Air Quality Criteria Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On November 30, 1988 (53 FR 48308), EPA announced public availability of two draft documents: (1) "Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information—OAQPS Draft Staff Paper" (Docket OAQPS-A-83-04); and (2) "Summary of Selected New Information of Effects of Health and Vegetation—Draft Supplement to the Air Quality Criteria Document for Ozone and Other Photochemical Oxidants" (Docket ECAO-CD-81-1). In that same notice, EPA solicited public comment on these documents and established a deadline of February 15, 1989 for receiving public comment.

In response to a request from the public, today's notice extends the period

for public comment on these documents until March 17, 1989. The request for a 30-day extension was made due to the large number of new studies reviewed in these documents.

DATES: Written comments on these draft documents will be accepted through March 17, 1989.

ADDRESSES: Submit comments on documents as follows:

Document (1) (Draft OAQPS Staff Paper): Comments may be submitted to Dr. David McKee, U.S. EPA, Office of Air Quality Planning and Standards (MD–12), Research Triangle Park, NC 27711, (919) 541–5288, (FTS) 629–5288. Copies of this draft may be obtained from Dr. McKee at the above address.

Document (2) (Draft Supplemental Air Quality Criteria Document): Comments may be submitted to the Ozone Project Officer, U.S. EPA, Environmental Criteria and Assessment Office (MD–52), Research Triangle Park, NC 27711, (919) 541–4163, (FTS) 629–4163. Copies of this draft may be obtained by writing or calling the Office of Research and Development Publications Center, CERI–FRN, U.S. EPA, 26 Martin Luther King Drive, Cincinnati, Ohio 45268, (513) 569–7562. Please ask for the document by name ("Draft Supplement to the Air Quality Criteria Document for Ozone and Other Photochemical Oxidants") and report number, EPA/600/8–88/105A.

FOR FURTHER INFORMATION CONTACT: Dr. David McKee, Air Quality Management Divison (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5288 (FTS 629–5288).

Dated: February 15, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89–4027 Filed 2–22–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3526–6]

Science Advisory Board

Environmental Engineering Committee Pollution Prevention Subcommittee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that the Science Advisory Board's Pollution Prevention Subcommittee will meet March 9–10, 1989. On March 9, the meeting will be held in the Assistant Administrator's for Research and Development's Conference Room, 908 West Tower, 401 M Street SW., Washington, D.C. On March 10, the meeting will be held in room number 3 of the North Conference Center, Waterside Mall, 401 M Street SW., Washington, DC. The meeting will begin at 9:00 a.m. on Thursday and adjourn no later than 5:00 p.m. on Friday.

The purpose of the meeting is to review the Agency's draft pollution prevention report to Congress. The meeting is open to the public.

Any member of the public wishing further information on the meeting, or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Executive Secretary, Science Advisory Board (A101–F) U.S. Environmental Protection Agency, Washington, DC 20460 at 202/382–2552 by March l, 1989. Seating at the meeting will be on first come basis.

Date: February 16, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89–4137 Filed 2–22–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51728; FRL–3527–1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13,1983 (48 FR 21722). This notice announces receipt of twenty-eight such PMNs and provides a summary of each.

DATES: Close of Review Periods: P 89–336, 89–337, 89–338, 89–339, May 2, 1989.

P 89–340, 89–341, 89–342, 89–343, May 3, 1989.

P 89–344, May 2, 1989.

P 89–345, 89–346, May 3, 1989.

P 89–347, 89–348, 89–349, 89–350, 89–351, 89–352, 89–353, May 6, 1989.

P 89–354, 89–355, 89–356, 89–357, 89–358, 89–359, 89–360, 89–361, 89–362, 89–363, May 7, 1989.

Written comments by: P 89–336, 89–337, 89–338, 89–339, April 2, 1989.

P 89–340, 89–341, 89–342, 89–343, April 3, 1989.

P 89–344, April 2, !989.

P 89–345, 89–346, April 3, 1989.

P 89–347, 89–348, 89–349, 89–350, 89–351, 89–352, 89–353, April 6, 1989.

P 89–354, 89–355, 89–356, 89–357, 89–358, 89–359, 89–360, 89–361, 89–362, 89–363, April 7, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS–51728]" and the specific PMN number should be sent to: Document Control Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room 201 East Tower, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street, SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89–336

Manufacturer. Confidential.

Chemical. (S) Alanine, n-(2-carboxyethyl)-.

Use/Production. (G) Textile additive surfactant in cleaning compounds. Prod. range: Confidential.

P 89–337

Importer. Confidential.

Chemical. (S) Perfluorinated hydrocarbon.

Use/Import. (G) Vapor phase soldering and condensation heating of printed circuit boards. Import range: Confidential.

P 89–338

Manufacturer. Confidential.

Chemical. (S) Dicyclopentadiene; hydrocarbon resin intermediate.

Use/Production. (S) Resins for adhesives. Prod. range: 2,000,000–3,000,000 kg/yr.

P 89–339

Manufacturer. Confidential.

Chemical. (G) Halo alkyl modified polyester.

Use/Production. (S) Intermediate for manufacture of polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 16 ml/kg species(Rat). Acute dermal toxicity: LD50 > 16 ml/kg species(Rabbit). Eye irritation: Slight

species(Rabbit). Skin irritation: Slight species(Rabbit).

P 89-340

Manufacturer. BioTechnica Agriculture, Inc.

Microorganism. (G) *Bradyrhizobium japonicum* strain USDA 110 was modified using recombinant DNA techniques to contain an antibiotic resistance marker and other genes to enhance nitrogen-fixing ability. Genes were introduced from the following genera: Streptomycin/spectinomycin resistance genes originated from *Shigella flexneri,* sequences from *Escherichia coli,* and additional intergeneric genes to enhance the nitrogen-fixing ability.

Use/Production. (G) Two small scale field trials: (1) To determine the effect of insertion of the genes on competition and symbiotic performance under field conditions and (2) to determine the effect of the strain on soybean yield. Production range: $1X10^{13}$ cells per year.

Test data. The dry weight of soybean plants inoculated with this strain was similar to that of soybean plants inoculated with the parent strain after 6 weeks of growth in a greenhouse.

Exposure. Human: Production and field application, maximum of 6 people. *Environmental:* The log cell number per gram of soil decreased from 6.5 to approximately 5 over 8 weeks in laboratory studies using soil from the field test site.

Environmental Release/Disposal: In the small scale field trial, release to air, soil, and water are possible. A vermiculite carrier containing the PMN strain will be applied to the seed, prior to sowing. The total acreage involved in these tests is 3.3 acres. The field test experiment will be conducted within a 2100 acre research farm owned by the Louisiana Agricultural Experiment Station, Louisiana State University, located in East Baton Rouge Parish, Louisiana. Laboratory cultures are sterilized before disposal in publicly owned treatment works.

P 89-341

Manufacturer. BioTechnica Agriculture, Inc.

Microorganism. (G) *Bradyrhizobium japonicum* strain isolated from Chippewa station in Pepin County, Wisconsin was modified using recombinant DNA techniques to contain an antibiotic resistance marker and other genes to enhance nitrogen-fixing ability. Genes were introduced from the following genera: Streptomycin/spectinomycin resistance genes originated from *Shigella flexneri,* sequences from *Escherichia coli,* and additional intergeneric genes to enhance the nitrogen-fixing ability.

Use/Production. (G) Two small scale field trials: (1) To determine the effect of insertion of the genes on competition and symbiotic performance under field conditions and (2) to determine the effect of the strain on soybean yield. Production range: $1X10^{13}$ cells per year.

Test data. The dry weight of soybean plants inoculated with this strain was similar to that of soybean plants inoculated with the parent strain after 6 weeks of growth in a greenhouse.

Exposure. Human: Production and field application, maximum of 6 people. *Environmental:* The log cell number per gram of soil decreased from 5.5 to approximately 4 over 8 weeks in laboratory studies using soil from the field test site.

Environmental Release/Disposal: In the small scale field trial, release to air, soil, and water are possible. A vermiculite carrier containing the PMN strain will be applied to the seed, prior to sowing. The total acreage involved in these tests is 3.3 acres. The field test experiment will be conducted within a 2100 acre research farm owned by the Louisiana Agricultural Experiment Station, Louisiana State University, located in East Baton Rouge Parish, Louisiana. Laboratory cultures are sterilized before disposal in publicly owned treatment works.

P 89-342

Manufacturer. Confidential.

Chemical. (G) Branched polyester polymer.

Use/Production. (G) Industrially used coating with an open use. Prod. range: 5,000-40,000 kg/yr.

P 89-343

Manufacturer. Ethyl Corporation.

Chemical. (G) Silane, methyl-, tris(mixed decyl- and octyl-) derivatives.

Use/Production. (G) Hydraulic fluid. Open, nondispersive use, contained use. Prod. range: Confidential.

P 89-344

Importer. Confidential.

Chemical. (G) Ethylene glycol alkyl ether.

Use/Import. (S) Thinner for paint and coating. Import range: 5,000,000 kg/yr.

Toxicity Data. Mutagenicity: negative.

P 89-345.

Importer. Mitsui Plastics, Inc.

Chemical. (G) Polymer vinyl chloride-vinyl acetate-2-methacryloyloxy ethyl phosphate copolymer.

Use/Import. (G) Adhesives for clean metal, paints for can coating, magnetic reporting media primer for metal. Import range: 30,000-360,000 kg/yr.

P 89-346

Importer. Confidential.

Chemical. (G) Fluorinated copolymer.

Use/Import. (G) Resin coating for leather. Import range: Confidential.

P 89-347

Manufacturer. Confidential.

Chemical. (G) 2-Chlorobenzyl-substituted heteropolycyle.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 89-348

Importer. UBE Industrial (America), Inc.

Chemical. (G) Isobutene maleic anhydride copolymer derivative.

Use/Import. (G) Base polymer of solder resist for print circuit board blend with vinyl monomers, photo-sensitizers. Import range: Confidential.

P 89-349

Manufacturer. Dow Corning Corporation.

Chemical. (G) Alkoxy-functional poly(dimethyl)siloxane.

Use/Production. (S) Adhesion additive. Prod. range: Confidential.

P 89-350

Manufacturer. Dow Corning Corporation.

Chemical. (G) Amino-functional poly(organo)siloxane.

Use/Production. (S) Intermediate for polymer synthesis. Prod. range: Confidential.

P 89-351

Manufacturer. Dow Corning Corporation.

Chemical. (G) Acrylamide-functional poly(organo)siloxane.

Use/Production. (S) UV curable siloxane coatings. Prod. range: Confidential.

P 89-352

Manufacturer. Sicpa Securink Corporation.

Chemical. (G) Intaglio varnish.

Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

P 89-353

Manufacturer. Sicpa Securink Corporation.

Chemical. (G) Alkyd resin.

Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

P 89-354

Manufacturer. Confidential.

Chemical. (G) polymer of alkyl poly(ethoxyethyl)ester of mon-ethylenically unsaturated carboxylic acid, mono-ethylenically unsaturated carboxylic acid and alkyl ester of mono-ethylenically unsaturated carboxylic acid, sodium salt.

Use/Production. (G) Thickener. Prod. range: Confidential.

P 89–355

Manufacturer. Confidential.

Chemical. (G) Polymer of alkyl poly(ethoxyethyl)ester of mon-ethylenically unsaturated carboxylic acid, mono-ethylenically unsaturated carboxylic acid and alkyl ester of mono-ethylenically unsaturated carboxylic acid potassium salt.

Use/Production. (G) Thickener. Prod. range: Confidential.

P 89–356

Manufacturer. Confidential.

Chemical. (G) Polymer of alkyl poly(ethoxyethyl) ester of mon-ethylenically unsaturated carboxylic acid mono-ethylenically unsaturated carboxylic acid and alkyl ester of mono-ethylenically carboxylic acid, lithium salt.

Use/Production. (G) Thickener. Prod. range: Confidential.

P 89–357

Manufacturer. Confidential.

Chemical. (G) Polymer of alkylpoly(ethoxylethyl)ester of mono-ethylenically unsaturated carboxylic acid, mono-ethylenically unsaturated carboxylic acid and alkyl ester of mono-ethylenically unsaturated carboxylic acid ammonium salt.

Use/Production. (G) Thickener. Prod. range: Confidential.

P 89–358

Manufacturer. Confidential.

Chemical. (G) Polymer of alkylpoly(ethoxyethyl)ester of mono-ethylenically unsaturated carboxylic acid, mono-ethylenically unsaturated carboxylic acid and alkyl ester of mono-ethylenically unsaturated carboxylic acid, amine salt.

Use/Production. (G) Thickener. Prod. range: Confidential.

P 89–359

Manufacturer. Confidential.

Chemical. (G) Polymer of alkylpoly(ethoxyethyl)ester of mono-ethylenically unsaturated carboxylic acid, mono-ethylenically unsaturated carboxylic acid and alkyl ester of mono-ethylenically unsaturated carboxylic acid, amine salt.

Use/Production. (G) Thickener. Prod. range: Confidential.

P 89–360

Manufacturer. Confidential.

Chemical. (G) Polymer of alkylpoly(ethoxyethyl)ester of mono-ethylenically unsaturated carboxylic acid mono-ethylenically carboxylic acid and alkyl ester of mon-ethylenically unsaturated xcarboxylic acid, amine salt.

Use/Production. (G) Thickener. Prod. range: Confidential.

P 89–361

Manufacturer. Confidential.

Chemical. (G) Polymer of alkylpoly(ethoxyethyl)ester of mon-ethylenically unsaturated carboxylic acid, mono-ethylenically unsaturated carboxylic acid and alkyl ester of mon-ethylenically unsaturated carboxylic acid, amine salt.

Use/Production. (G) Thickener. Prod. range: Confidential.

P 89–362

Manufacturer. Confidential.

Chemical. (G) Polymer of alkylpoly(ethoxyethyl)ester of mon-ethylanically unsaturated carboxylic acid, mon-ethylenically unsaturated carboxylic acid and alkyl esterof mon-ethylenically unsaturated carboxylic acid, amine salt.

Use/Production. (G) Thickener. Prod. range: Confidential.

P 89–363

Manufacturer. Confidential.

Chemical. (G) Polymer of alkylpoly(ethoxyethyl)ester of mono-ethylenically unsaturated acid, mono-ethylenically unsaturated carboxylic acid, mono-ethylenically unsaturated carboxylic acid, and alkyl ester of mono-ethylenically unsaturated carboxylic acid, amine salt.

Use/Production. (G) Thickener. Prod. range: Confidential.

Date: February 17, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89–4139 Filed 2–22–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3500–2]

Underground Injection Control Program; Proposed Fracture Gradients and Establishment of Maximum Injection Pressure Formulas for Rule-Authorized Enhanced Recovery Wells in the State of New York

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to the programmatic requirements and state-specific requirements of the Underground Injection Control (UIC) program, 40 CFR 144.22(b) and 147.1654 respectively, the Regional Administrator of Region II is today providing notice of fracture gradients and maximum injection pressure formulas for rule-authorized enhanced recovery wells in the State of New York. The Regional Administrator is also providing an opportunity for comment and public hearing on today's proposal.

DATES: Written comments and any reference data must be submitted on or before March 27, 1989. If no significant public comments are received that warrant changes to this proposal, including public comment that may be received if a hearing is held, this proposal will become final on April 24, 1989.

ADDRESS: Send written comments on these proposed fracture gradients and maximum injection pressure formulas to Walter E. Andrews, Chief, Drinking/Ground Water Protection Branch, U.S. EPA Region II, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Charles W. Zafonte, Chief, Underground Injection Control Section, U.S. EPA Region II, 26 Federal Plaza, New York, New York 10278, (212) 264–1800.

SUPPLEMENTARY INFORMATION:

I. Background

40 CFR 147.1654(a)(1)(i) of the Underground Injection Control program's state-specific requirements states, in part, "... the owner or operator shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum injection pressure after notice, opportunity for comment, and opportunity for a public hearing. ..." EPA Region II has, after extensive investigation, developed and is proposing for public comment today, fracture gradients and maximum injection pressure formulas for oil- and/or gas-bearing geologic formations in the State of New York where enhanced recovery operations are authorized by rule under the UIC program.

II. Basis for Proposal

The proposed fracture gradients and the maximum injection pressure formulas set forth today were developed

from information submitted to EPA during the promulgation process for the New York State UIC program and from additional information supplied to EPA by owners and operators during the first year of program implementation.

Table 1 lists the proposed fracture gradients of relevant geologic formations. These fracture gradients were determined by analyzing instantaneous shut-in pressures and other relevant geologic data from wells drilled into these oil- and/or gas-bearing strata. During calculation of each fracture gradient, the hydrostatic pressure gradient was assumed to be 0.433 psi/ft and the depth was assumed to be the average depth to the top of the producing formation.

TABLE 1.—FORMATION FRACTURE GRADIENTS

Formation	Fracture gradient
Bradford First	1.19 psi/ft.
Bradford Second	1.20 psi/ft.
Bradford Third	1.22 psi/ft.
Chipmunk	1.21 psi/ft.
Fulmer Valley	1.20 psi/ft.
Richburg	1.22 psi/ft.
Penny	1.13 psi/ft.
Scio	1.12 psi/ft.
Waugh and Porter	1.17 psi/ft.
Glade	1.08 psi/ft.

The formula for the maximum surface injection pressure to be used for each well or well field authorized by rule is:

$$P_{max} = [\text{Fracture Gradient} - (0.433 \times \text{Specific Gravity})] \times \text{Shallowest Well Depth of Project}$$

In determining final maximum injection pressure, if the injection fluid does not have a specific gravity of 1.00, the hydrostatic pressure gradient (0.433 psi/ft) must be multiplied by the specific gravity of the injection fluid before being subtracted from the fracture gradient. The shallowest well depth in a rule-authorized project should be the well depth used to calculate the maximum injection pressure. If sufficient data were not available to determine an appropriate formation fracture gradient, EPA Region II did not list a specific gradient. For gas- and/or oil-bearing formations not listed in Table 1, the maximum surface injection pressure formula is:

A. Water Flood:

$$P_{max} = [0.733 - (0.433 \times \text{Specific Gravity})] \times \text{Shallowest Well Depth of Project}$$

B. Gas Flood:

$$P_{max} = (0.733 - 0.04^{*}) \times \text{Shallowest Well Depth of Project}$$

* Specific gravity of methane gas.

Upon EPA's receipt of additional data appropriate to the determination of these fracture gradients or the calculation of maximum injection pressure, EPA Region II will consider amendments to the proposed gradients and formulas. Requests for such amendments must be in writing and should be sent to Walter E. Andrews, Chief, Drinking/Ground Water Protection Branch, at the address provided at the beginning of this notice.

III. Announcement of Public Hearing.

A public hearing to discuss these proposals has been scheduled for Tuesday, March 21, 1989, at 7 p.m., in the Olean Municipal Building, Route 16, Olean, New York.

If sufficient public comments are not received by March 15, 1989, EPA reserves the right to cancel this hearing. If no significant public comments are received that warrant changes to these proposals, either written or through the format of a public hearing, this proposal will become final on April 24, 1989.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 89-4140 Filed 2-22-89; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

[Farm Credit Administration Order No. 888]

Delegation of Authority

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: On January 6, 1989, by order of the Board, the Farm Credit Administration issued Order No. 888 The text of the Order is as follows:

Whereas, after January 6, 1989, there will exist two vacancies on the Farm Credit Administration Board (Board); and

Whereas, the Farm Credit Act of 1971 directs the Board to provide for the performance of all the powers and duties vested in the Farm Credit Administration (FCA) and recognizes the Board's power to delegate the exercise of certain of its authorities; and

Whereas, the Board desires to ensure that the FCA can continue to operate effectively and to carry out its statutorily prescribed duties and purposes during the period of time in which there may be an insufficient number of qualified members to constitute a quorum of the Board;

Now, therefore:

1. The Board hereby delegates to the Acting Chairman of the FCA the authority to exercise, in his discretion, any and all authorities of the FCA granted to the Agency or the Board by statute, regulation, or otherwise except those authorities that are nondelegable. This delegation of authority does not include authority to establish general policy and promulgate rules and regulations, or any delegation expressly prohibited by statute. This delegation shall include, but shall not be limited to, the exercise of the following powers:

(a) The approval of any and all actions of Farm Credit institutions as required by statute, regulations, or otherwise to be approved by the FCA or its Board;

(b) The exercise of all powers of enforcement granted to the FCA by statute, including but not limited to, the authorities contained in 12 U.S.C. 2154, 2154a, 2183, 2202a, and 2261–2274; and

(c) Any actions or approvals required in connection with the conduct of a receivership or conservatorship of a Farm Credit institution.

2. Authorities delegated by this Order may be redelegated, in writing, at the discretion of the Acting Chairman, to other FCA employees.

3. The provisions of this Order shall become effective at the close of business on January 6, 1989, and shall remain in effect thereafter until a quorum of the Board can be constituted.

By Order of the Board.

The original order was signed by Marvin Duncan, Acting, Chairman, and Jim R. Billington, Member.

Dated: February 17, 1989

David A. Hill

Secretary Farm Credit Administration Board.

[FR Doc. 89-4179 Filed 2-22-89; 1:12 am]

BILLING CODE 6705-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of

the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–008900–042.
Title: The "8900" Lines Agreement.
Parties:
The National Shipping Company of Saudi Arabia
United Arab Shipping Company (S.A.G.)
Waterman Steamship Corporation
A.P. Moller-Maersk Line
Sea-Land Service, Inc.

Synopsis: The proposed modification would permit the parties to enter into loyalty contracts in accordance with the antitrust laws of the United States. It would also prohibit any party, either individually or jointly with any other carrier or carriers, from entering into an individual loyalty contract in the Agreement trade. It further prohibits any party from taking independent action with respect to loyalty contracts.

Agreement No.: 203–011232.
Title: USA-South Africa Discussion Agreement.
Parties:
Mediterranean Shipping Co. ("Independent Party")
Lykes Bros. Steamship Co., Inc. ("Conference Party")
Empresa de Navegacao Internacional (Navinter) ("Conference Party")
Safbank Line, Ltd. ("Conference Party").

Synopsis: The proposed Agreement would permit the Conference parties to meet with the Independent party(ies) to discuss, exchange information, and agree upon rates and service items in the trade between United States Atlantic, Gulf, and Pacific Coast ports (excluding ports in Hawaii and Alaska), and points in the United States (including points in port areas) via U.S. ports, and ports and inland points, including points in port areas, in the range from the northern border of South West Africa to the southern border of Tanzania. Adherence to any agreement reached would be voluntary. The parties have requested a shortened review period.

Agreement No.: 203–011233.
Title: USA-East Africa Discussion Agreement.
Parties:
A.P. Moller-Maersk Line ("Independent Party")
Mediterranean Shipping Co. ("Independent Party")
Lykes Bros. Steamship Co., Inc. ("Conference Party")
The Bank Line ("Conference Party")
P&O Containers Limited ("Conference Party").

Synopsis: The proposed Agreement would permit the Conference parties to meet with the Independent party(ies) to discuss, exchange information, and agree upon rates and service items in the trade between United States Atlantic, Gulf, and Pacific Coast ports (excluding ports in Hawaii and Alaska), points in the United States (including points in port areas) via U.S. ports, and ports and inland points, including points in port areas, in the range from the southern border of Tanzania and Cape Guardfui, Somalia, including the Islands of Reunion, Mauritius, the Comoros and Seychelles, and Madagascar. Adherence to any agreement reached would be voluntary. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: February 17, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89–4192 Filed 2–22–89; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citizens Bancorp et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and §225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 16, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Citizens Bancorp,* Riverdale, Maryland; to acquire 100 percent of the voting shares of Arlington Bank, Arlington, Virginia.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Lanier Bankshares, Inc.,* Gainesville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Lanier National Bank, Gainesville, Georgia, a *de novo* bank.

2. *Nu-Bancorp, Inc.,* Boca Raton, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Boca Bankcorp, Inc., and thereby indirectly acquire Boca Bank, Boca Raton, Florida; and First Commercial Bancorporation, Boca Raton, Florida, and thereby indirectly acquire First Commercial Bank of Florida, Boca Raton, Florida. As a result of the acquisitions, Applicant's name will be changed to Boca Bancorp, Inc., Boca Raton, Florida.

3. *PNB Bankshares, Inc.,* Peachtree City, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Peachtree National Bank, Peachtree City, Georgia.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Fort Wayne National Corporation,* Fort Wayne, Indiana; to merge with FN Bancorp, Warsaw, Indiana, and thereby indirectly acquire First National Bank of Warsaw, Warsaw, Indiana.

2. *Iowa Financial Bancorporation,* Minneapolis, Minnesota; to become a bank holding company by acquiring 95.88 percent of the voting shares of First National Bank of Oelwein, Oelwein, Iowa; and BP Corporation, Minneapolis, Minnesota, and thereby indirectly acquire Iowa State Savings Bank, Clinton, Iowa.

3. *Oelwein Bancorporation,* Minneapolis, Minnesota; to acquire 80 percent of the voting shares of BP Corporation, Minneapolis, Minnesota, and thereby indirectly acquire Iowa State Savings Bank, Clinton, Iowa.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Moore Financial Group Incorporated,* Boise, Idaho; to acquire

100 percent of the voting shares of The Idaho First National Bank, in organization, Boise, Idaho, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-4185 Filed 2-22-89; 8:45 am]

BILLING CODE 6210-01-M

Hyden Citizens Bancorp, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under section 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 CFR 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 17, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Hyden Citizens Bancorp, Inc.*, Hyden, Kentucky; to engage *de novo* through its subsidiary, Appalachian Finance Co., Hyden, Kentucky, in the consumer finance business pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants & Manufacturers Bancorporation, Inc.*, Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, Lincoln Neighborhood Redevelopment Corporation, Milwaukee, Wisconsin, in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Milwaukee, Wisconsin.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to engage *de novo* in making and servicing loans for its own account pursuant to § 225.25(b)(1) of the Board's Regulation Y. These loans would be temporary financing related to operations at FBS Merchant Banking Group, a division of Applicant.

Board of Governors of the Federal Reserve System, February 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-4186 Filed 2-22-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 10, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *John A. Kaneb*, Chelsea, Massachusetts; to acquire 10.56 percent of the voting shares of Neworld Bancorp, Inc., Boston, Massachusetts, and thereby indirectly acquire Neworld Bank for Savings, Boston, Massachusetts.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *J.G. Ashley, Jr.*, Madison, Florida; M.C. Burnett, Greenville, Florida; O. Wayne Clark, Madison, Florida; C.E. Russell, Madison, Florida; Bob J. Valentine, Madison, Florida; Patricia M. Reams, Greenville, Florida; Thomas J. Beggs, III, Madison, Florida; Edwin B. Browning, Jr., Madison, Florida; and J.B. Davis, Jr., Lee, Florida; to acquire an additional 6.76 percent of the voting shares of North Florida Bank Corporation, Madison, Florida, and thereby indirectly acquire Bank of Madison County, Madison, Florida.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Wayne Major*, Riverton, Wyoming; to acquire an additional 1.37 percent of the voting shares of Riverton State Bank Holding Company, Riverton, Wyoming, and thereby indirectly acquire Riverton State Bank, Riverton, Wyoming, and Dubois National Bank, Dubois, Wyoming.

Board of Governors of the Federal Reserve System, February 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-4187 Filed 2-22-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0030]

Public Meeting; Seafood Safety as Related to Cooked and Processed Seafood

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Midwest Region, is announcing a public meeting with the seafood industry and other interested persons to discuss a number of agency concerns relating to public health

aspects of cooked and processed seafood.

DATES: The meeting will be held on Tuesday, March 28, 1989, from 9 a.m., to 4 p.m. Interested persons unable to attend may submit written comments on the issues outlined in this notice by April 24, 1989.

ADDRESSES: The meeting will be held in the Florentine Room, Congress Hotel, 520 South Michigan Ave., Chicago, IL 60605. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, referencing the docket number found in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Joe L. Petty, Food and Drug Administration (HFR–MW17), 20 North Michigan Ave., Rm., 550, Chicago, IL 60602, 312–353–9406.

SUPPLEMENTARY INFORMATION: The meeting is being sponsored by FDA's Midwest Regional Office, in accordance with 21 CFR 10.65(b), to discuss with the seafood industry and other interested persons the agency's concerns raised by its inspectional and analytical findings relating to cooked and processed seafood.

Issues to be discussed will include:

1. Microbiological contamination of ready-to-eat or heat-and-serve seafood products;

2. Public health concerns relating to these products;

3. Improved processing practices for these products;

4. Strategies for protecting the consumer from associated health risks.

FDA is inviting all interested persons to participate in this meeting. Interested persons who will be unable to attend the meeting may submit to the Dockets Management Branch (address above) written comments that set forth their views on the issues outlined in this notice.

Dated: February 14, 1989.

Alan L. Hoeting,

Acting Associate Commission for Regulatory Affairs.

[FR Doc. 89–4181 Filed 2–22–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89N–0030]

Public Meeting; Seafood Safety As Related to Cooked and Processed Seafood

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Southwest Region, is announcing a public meeting with the seafood industry and other interested persons to discuss a number of agency concerns relating to public health aspects of cooked and processed seafood.

DATES: The meeting will be held on Tuesday, March 21, 1989, from 9 a.m. to 4 p.m. Interested persons unable to attend may submit written comments on the issues outlined in this notice by April 24, 1989.

ADDRESSES: The meeting will be held in the Riviera Room, Corpus Christi Marriott, 707 North Shoreline Blvd., Corpus Christi, TX 78401. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, referencing the docket number found in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Harold L. Jones, Food and Drug Administration (HFR–SW17), 3032 Bryan St., Dallas, TX 75024, 214–655–5315.

SUPPLEMENTARY INFORMATION: The meeting is being sponsored by FDA's Southwest Rgional Office, in accordance with 21 CFR 10.65(b), to discuss with the seafood industry and other interested persons the agency's concerns raised by its inspectional and analytical findings relating to cooked and processed seafood.

Issues to be discussed will include;

1. Microbiological contamination of ready-to-eat or heat-and-serve seafood products;

2. Public health concerns relating to these products;

3. Improved processing practices for these products;

4. Strategies for protecting the consumer from associated health risks.

FDA is inviting all interested persons to participate in this meeting. Interested persons who will be unable to attend the meeting may submit to the Dockets Management Branch (address above) written comments that set forth their views on the issues outlined in this notice.

Dated: February 14, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–4182 Filed 2–22–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89N–0030]

Public Meeting; Seafood Safety As Related To Cooked and Processed Seafood

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Pacific Region, is announcing a public meeting with the seafood industry and other interested persons to discuss a number of agency concerns relating to public health aspects of cooked and processed seafood. FDA is cosponsoring the meeting with the University of California. Sea Grant Extensions Program, Davis, CA.

DATES: The meeting will be held on Tuesday, April 4, 1989, from 9 a.m. to 3:30 p.m. Interested persons unable to attend may submit written comments on the issues outlined in this notice by April 24, 1989.

ADDRESSES: The meeting will be held at the Hilton-Oakland Airport Hotel, One Hegenberger Rd., Oakland, CA 94614. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, referencing the docket number found in the hearing of this notice.

FOR FURTHER INFORMATION CONTACT: Hank Kocol, Food and Drug Administration (HFR–PA037), 22201 23rd Dr. SE., Bothell, WA 98021, 206–483–4959.

SUPPLEMENTARY INFORMATION: The meeting is being cosponsored by FDA's Pacific Regional Office, in accordance with 21 CFR 10.65(b), to discuss with the seafood industry and other interested persons the agency's concerns raised by its inspectional and analytical findings relating to cooked and processed seafood.

Issues to be discussed will include:

1. Microbiological contamination of ready-to-eat or heat-and-serve seafood products;

2. Public health concerns relating to these products;

3. Improved processing practices for these products;

4. Strategies for protecting the consumer from associated health risks.

FDA is inviting all interested persons to participate in this meeting. Interested persons who will be unable to attend the meeting may submit to the Dockets Management Branch (address above) written comments that set forth their views on the issues outlined in this notice.

Dated: February 14, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–4180 Filed 2–22–89; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, March 16–17, 1989, at the Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on March 16 at 8:30 a.m. to approximately 9 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 16 from 9 a.m. to recess and on March 17 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of Committee members, upon request.

Ms. Cynthia Sewell, Executive Secretary, Cancer Research Manpower Review Committee, National Cancer Institute, Westwood Building, Room 838, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7721) will furnish substantive program information upon request.

Dated: February 10, 1989

Betty J. Beveridge,

Committee Management Officer, HIH.

[FR Doc. 89–4142 Filed 2–22–89; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Pub. L. 94–463, notice is hereby given of the meetings of the following study sections for March through April 1989, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in §§ 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and § 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	March-April 1989 meeting	Time	Location
Behavioral and Neurosciences-1, Dr. Luigi Giacometti, Rm. 303, Tel. 301–496–5352	Mar. 15–17	9:00	The Savoy Suites Hotel, Washington, DC.
Behavioral and Neurosciences-2, Dr. Luigi Giacometti, Rm. 303, Tel. 3301–496–5352	Apr. 3	9:00	Omni Shorham Hotel, Washington, DC.
Biomedical Sciences-2, Dr. Charles Baker, Rm. 219, Tel. 301–496–7150	Mar. 30–31	8:30	Crowne Plaza, Rockville, MD.
Biomedical Sciences-3, Mr. Gene Headley, Rm. A25, Tel. 301–496–7287	Mar. 20–21	8:30	St. James Hotel, Washington, DC.
Biomedical Sciences-4, Dr. Charles Baker, Rm. 219, Tel. 301–496–7150	Mar. 28–29	8:30	Crowne Plaza, Rockville, MD.
Biomedical Sciences-5, Dr. Zain Abedin, Rm. 328, Tel. 301–496–7830	Mar. 13–14	8:30	Holiday Inn, Bethesda, MD.
Biomedical Sciences-6, Dr. Syed M. Amir, Rm. 326, Tel. 301–496–3117	Mar. 22–24	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences-7, Dr. Gerald Liddel, Rm. 357, Tel. 301–496–7130	Mar. 22–24	8:30	St. James Hotel, Washington, DC.
Clinical Sciences-1, Dr. Lynwood Jones, Jr., Rm. A20, Tel. 301–496–7510	Mar. 8–10	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences-2, Mrs. Jo Pelham, Rm. 319C, Tel. 301–496–7477	Mar. 13–14	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences-3, Dr. Nicholas Mazarella, Rm. A27, Tel. 301–496–1069	Mar. 23–24	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences-4, Mrs. Jo Pelham, Rm. 319C, Tel. 301–496–7477	Mar. 22–23	8:30	Crowne Plaza, New Orleans, LA.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.892, 13.893, National Institutes of Health, HHS)

Dated: February 10, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–4147 Filed 2–22–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, on March 30–31, 1989, in Building 31, Conference Room 7.

This meeting will be open to the public on March 30 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 10 a.m. on March 30 until

adjournment on March 31 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 10, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–4143 Filed 2–22–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 30–31, 1989, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 30 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 30 from approximately 10 a.m. until adjournment on March 31 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health.)

Dated: February 10, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–4144 Filed 2–22–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting of the Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on March 15–17, 1989, at the Ramada Inn Hotel, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting of the full Committee, for orientation of new members, discussion of administrative details relating to committee business, and program review, will be open to the public from 8:30 a.m. until 11 a.m. on March 15. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the full Committee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 11 a.m. until recess on March 15, from 8:30 a.m. until recess on March 16, and from 8:30 a.m. until adjournment on March 17. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Hortencia M. Hornbeak, Executive Secretary, Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Westwood Building, Room 3A05, Bethesda, Maryland 20892, telephone (301–496–0123), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Science; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: February 10, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–4145 Filed 2–22–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on March 6, 1989, Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland. The meeting will be open to the public from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

The meeting will be closed to the public from 9 a.m. to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Melvin H. Gottlieb, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, Room 3A11, Bethesda, Maryland 20892, (301) 496-0754.

Mrs. Carole Frank, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, Room 4C27, Bethesda, Maryland 20892, 301-496-0803, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: February 10, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-4146 Filed 2-22-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program, Board of Scientific Counselors' Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Services (NIEHS), Research Triangle Park, North Carolina on March 4, 1989.

The meeting will be open to the public from 8:30 a.m. until adjournment. The preliminary agenda topics with *approximate* times are as follows:

8:30 a.m.-8:45 a.m.—Report of the Director, NTP

8:45 a.m.-10:30 a.m.—Concept Reviews—NIEHS Division of Toxicology Research and Testing (DTRT):

I. Toxicology and Carcinogenesis Studies;

II. National Toxicology Program Chemical Repository and Safety Support;

III. Chemistry Support Services for the National Toxicology Program;

IV. Rodent-Disease Diagnostic Laboratories;

V. Genetic Monitoring of Inbred Rodents;

VI. Pathology Support for the National Toxicology Program;

VII. National Toxicology Program Pathology Repository and Archive; and

VIII. Statistical Analysis of Laboratory Studies.

10:45 a.m.-12:15 p.m. and

1:00 p.m.-2:00 p.m.—Concept Reviews—Testing/Methods Development/Validation Contracts—NIEHS, DTRT:

I. Expired Breath Analysis in Chemical Toxicity Assessment;

II. Immunotoxicity of Environmental Chemicals and Therapeutics;

III. Collaborative Study on Neutrotoxicology Assessment;

IV. Mutagenicity Studies with *Salmonella*;

V. *In Vivo* Cytogenetics Testing;

VI. Mammalian Germ Cell Mutagenesis; and

VII. Identification of Tumor Suppressor Genes in Chemically-Induced Rodent Tumors.

2:00 p.m.-2:15 p.m.—Update on Activities of the Technical Reports Review Subcommittee (Peer Review Panel);

2:15 p.m.-3:00 p.m.—Update on Activities of the Reproductive and Developmental Toxicology Program Review Subcommittee and Report on Scientific Efforts in NTP Reproductive and Developmental Toxicology Programs.

3:00 p.m.-4:00 p.m.—Review of Chemicals Nominated for NTP Studies. The nominations of five chemicals will be reviewed. The chemicals were evaluated by the NTP Chemical Evaluation Committee on December 1, 1988, and are (with CAS Nos. in parentheses): (1) Dimethylformamide (68-12-2); (2) Formamide (75-12-7); (3) Indium Phosphide (22398-80-7); (4) N-Methyl-pyrrolidone (872-50-4); and Monomethylformamide (123-39-7). A Request for Comments on these chemicals was published in the Federal Register Vol. 54, No. 21, pp. 5279-5280, February 2, 1989.

The Executive Secretary, Dr. Larry G. Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541-3971; FTS 629-3971, will have available a roster of Board members and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Dated: February 17, 1989.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 89-4190 Filed 2-23-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of the Choctaw Nation and Chickasaw Nation Indian Judgment Funds in Docket 387-85L Before the United States Claims Court

February 2, 1989.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

EFFECTIVE DATE: This plan was effective on October 18, 1988.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS 4627-MIB, 18th and C Streets, NW., Washington, DC. 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973, (Pub. L. 93-134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian Tribe. Funds were appropriated on January 12, 1988, in satisfaction of the award granted to the Choctaw Nation and Chickasaw Nation before the United States Claims Court in Docket 387-85L. The plan for the use and distribution of the funds was submitted to Congress with a letter dated July 7, 1988, and was received (as recorded in the Congressional Record) by the Senate on July 13, 1988, and by the House of Representatives on July 11, 1988. The plan became effective on October 18, 1988, as provided by the 1973 Act, as amended by Pub. L. 97-458, since a joint resolution disapproving it was not enacted. However, it should be noted that the plan, with respect to the Chickasaw Nation, was amended by the Act of November 1, 1988, Pub. L. 100-581, 102 Stat. 2938. The plan reads as follows:

For the Use and Distribution of the Judgment Funds Awarded to the Choctaw Nation and Chickasaw Nation in Docket 387-85L before the United States Claims Court.

The funds appropriated January 12, 1988, in satisfaction of the award granted to the Choctaw Nation of Oklahoma and the Chickasaw Nation of Oklahoma, in Docket 387-85L before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows.

The Secretary of the Interior shall divide the funds between the Choctaw Nation of Oklahoma and the Chickasaw Nation of Oklahoma, with 75% of the funds to the Choctaw Nation and 25% of the funds to the Chickasaw Nation, as of the effective date of this plan.

Choctaw Share

The entirely of the Choctaw Nation's share shall be invested by the Secretary of the Interior for the Choctaw Nation. The principal, interest, and investment income accrued shall be available for use by the tribal governing body on a budgetary basis, subject to the approval of the Secretary, for tribal government and economic development programs.

If the Choctaw Nation wishes at some future date to establish another investment fund for general programing purposes, whereby only the interest and investment income accrued would be used, the Tribal Council may present such an investment plan to the Secretary for approval.

Chickasaw Share

The entirely of the Chickasaw Nation's share of the funds shall be used and distributed as follows:

Elderly Assistance Program

A one-time elderly assistance payment shall be made in the amount of $1,000 to each Chickasaw Indian by blood living on the effective date of the plan whose name appears on the final rolls of the Chickasaw Nation approved pursuant to Section 2 of the Act of April 26, 1906, 34 Stat. 137.

A 30-day deadline shall be established by the tribal legislative for those persons eligible to submit an application to share in the elderly assistance payment. An escrow fund in the amount of $25,000 will be established for the payment of those persons eligible to participate in the $1,000 payment, who fail to return their application within the 30-day deadline. Procedures to implement the elderly assistance payment are to be prepared by the Governor of the Chickasaw Nation, adopted by the Chickasaw Tribal Legislature, and approved by the Secretary.

Any remaining amount in the escrow fund one year after the elderly assistance payment is made shall be divided equally between the tribal government investment fund and the education program investment fund.

Tribal Government and Education

The remaining portion of the Chickasaw share of the funds shall be invested by the Secretary of the Interior. Fifty percent (50%) of the funds shall be invested for tribal government programs and operations, and fifty percent (50%) of the funds shall be invested for education programs, including the establishment of a Chickasaw Educational Foundation. The interest and investment income accrued from each investment is to be available on a budgetary basis to the tribal governing body, subject to the approval of the Secretary.

The principal maintained in these two funds for tribal government programs and education programs shall be available to the tribal governing body for these same programs only if the Chickasaw electorate authorizes use of the principal by a regular tribal election.

General Provisions

The elderly assistance distribution made to the eligible persons of Chickasaw by blood shall be paid directly to them. The per capita shares of decreased individual beneficiaries shall be determined and distributed in accordance with 43 CFR Part 4, Subpart B; the Regional Solicitor is hereby authorized to determine the shares of decreased individual beneficiaries. Shares of legal incompetents shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

None of the funds distributed pursuant to the Chickasaw elderly assistance program or any other programs made available under this plan, shall be subject to federal or state income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares and dividend payments in excess of $2,000, any federal or federally assisted program.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89-4219 Filed 2-22-89; 8:45 am]

BILLING CODE 4310-02-M

Adding Lands to Existing Reservation for the Seminole Indians of Florida

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

SUMMARY: Notice is hereby given that, under the authority of section 7 of the Act of June 18, 1934 (48 Stat. 986; 24 USC 467), and section 6(a) of the Seminole Indian Land Claims Settlement Act of 1987 (101 Stat. 1156, Pub. L. 100-228), the hereinafter described tract of land, located in Broward County, Florida, was proclaimed to be an Indian Reservation, effective January 31, 1989 for exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservation.

Tallahasee Meridian

Broward County

Beginning at the southwest corner of Section 31, Township 48 South, Range 35 East; thence easterly along the south border of Sections 31, 32 and 33, Township 48 South, Range 35 East, to the westernmost boundary of the levee 28 works in Section 33, Township 48 South, Range 35 East; thence continuing north along the westernmost boundary of the levee 28 works to the point at which the westernmost boundary of the levee 28 works intersects the southernmost boundary of the levee 4 works in Section 9, Township 48 South, Range 35 East; thence continuing westerly along the southernmost boundary of the levee 4 works to the point at which the southernmost boundary of the levee 4 works intersects the dividing line between Township 48 South, Range 35 East and Township 48 South, Range 34 East at the Broward County and Hendry County line; and thence continuing south along said line to the point of beginning.

The above-described lands contain approximately 15 sections, more or less, and were acquired subject to all valid existing rights, reservations, rights-of-way and easements of record.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89-4220 Filed 2-22-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NV020-4320-02]

Meeting of Winemucca District Grazing Advisory Board

AGENCY: Bureau of Land Management.

ACTION: Winnemucca District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and section 3, Executive Order 12548, February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board will be held on April 6, 1989. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Public Statement—10:00 a.m.
2. Election of Board Officers
3. District Manager's Update
4. Update on Decisions and Agreements for I & M Allotments
5. Range Improvement Funds: FY 89 Projects, FY 90 Projects.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by March 31, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public

inspection (during regular business hours) within 30 days following the meeting.

Ron Wenker,

District, Manager.

Dated: February 13, 1989.

[FR Doc. 89-4221 Filed 2-22-89; 8:45 am]

BILLING CODE 4310-HC-M

[NM-040-09-4212-11; OK NM 68892]

Recreation and Public Purposes Classification; Cleveland County, OK

AGENCY: Bureau of Land Management, Interior, Tulsa District, Oklahoma.

ACTION: Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Oklahoma.

SUMMARY: The following described lands have been examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.)

Indian Meridian

T. 9 N., R. 3 W.,
Sec. 18: Lots 8, 9, 10, and 11
Sec. 19: Lot 5.
Containing 148.18 acres.

The lands were examined in response to R&PP application, Serial Number OK NM 68892, filed by the University of Oklahoma, to use the lands for environmental education and biological research. The suitability is based on the following reasons:

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

3. All valid existing rights documented on the official public land records at the time of patent issuance.

4. Those rights for a natural gas pipeline granted to Sun Oil Co., its successors or assigns, by the right-of-way OK NM 40164, under section 28 of the Act of February 25, 1920 (41 Stat. 449, 30 U.S.C. 185); as amended by the Act of November 16, 1973 (87 Stat. 576).

5. Restrictions under Executive Orders 11990 and 11988 for the protection and management of wetlands and floodplain.

SUPPLEMENTARY INFORMATION: Upon publication of this Notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the Bureau of Land Management, District Manager, Tulsa District Office, 9522-H E. 47th Place, Tulsa, OK 74145. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Paul Tanner, Area Manager, or Jacqueline Gratton, Realty Specialist, Oklahoma Resource Area, (405) 231-5491.

Jim Sims,

District Manager.

[FR Doc. 89-4126 Filed 2-22-89; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-920-09-4212-14; A-22658]

Realty Action; Arizona

February 14, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to inform the public of the completion of a sale of .62 acres of public land in Arizona to David W. Johnson in accordance with Sections 203 and 209 of the Act of October 21, 1976 (43 U.S.C. 1719).

FOR FURTHER INFORMATION CONTACT: Marsha Luke, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

SUPPLEMENTARY INFORMATION: On January 9, 1989, the following described public land in Gila County was purchased by direct sale and conveyed to David W. Johnson under Patent No. 02-89-0015:

Gila and Salt River Meridian

T. 1 N., R. 15 E.,
Sec. 27, lot 7.

The purpose of this notice is to inform the public and interested governmental officials of the sale of public land.

Marsha Luke,

Acting Chief, Branch of Lands Operations.

[FR Doc. 89-4223 Filed 2-22-89; 8:45 am]

BILLING CODE 4310-32-M

[WY-930-09-4212-24; WYM 114330]

Filing of Application for Conveyance of Federally-Owned Mineral Interests; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

EFFECTIVE DATE: February 23, 1989.

SUMMARY: Anam, Inc., has applied under Section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719, 43 CFR Part 2720; to purchase the Federal locatable and salable mineral interests in the following land:

Sixth Principal Meridian, Wyoming

T. 35 N., R. 111 W.,
Sec. 7, W½NE¼, SE¼NE¼, and NE¼ SE¼;
Sec. 8, N½NW¼, SW¼NW¼, and SW¼;
Sec. 17, N½NW¼ and SE¼NW¼;
Sec. 18, lots 3, 4, and E½SW¼;
Sec. 19, lot 1 and NE¼NW¼.
T. 35 N., R. 112 W.,
Sec. 13, SE¼SW¼ and S½SE¼;
Sec. 24, N½NE¼ and NE¼NW¼.
T. 36 N., R. 112 W.,
Sec. 25, S½SW¼ and SW¼SE¼.

FOR FURTHER INFORMATION CONTACT: Jon Johnson, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001, 307-772-2074, for more information concerning this application.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from the date of filing of the application, December 19, 1988, whichever occurs first.

John A. Naylor,

Chief, Branch of Land Resources.

February 10, 1989.

[FR Doc. 89-4222 Filed 2-22-89; 8:45 am]

BILLING CODE 4310-22-M

[OR-943-09-4214-10; GP9-126; OR-39912]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, has filed an application on behalf of the Department of the Air Force to withdraw 2,622 acres of public land for the Air Force West Coast Over-the-Horizon Backscatter Radar Transmitter Site near Christmas Valley. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by May 24, 1989.

ADDRESS: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: On January 31, 1989, the Department of the Army, Corps of Engineers, filed an application on behalf of the Department of the Air Force, to withdraw the following described public land form settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Willamette Meridian

A parcel of land situated in sections 19, 30, 31, and 32, T. 26 S., R. 20 E., and Section 6, T. 27 S., R. 20 E., described as follows:

Commencing at the southwest corner of said Section 31; thence north 0°50'01" east along the west line of said Section 4, 682.15 feet to the POINT OF BEGINNING; thence continuing along said line north 0°50'01" east, 18.26 feet, thence north 67°22'48" east, 5,402.59 feet; thence north 54°09'10" west, 4,023.04 feet; thence north 35°51'06" east, 6,213.18 feet; thence south 54°09'28" east, 6,100.18 feet; thence south 35°50'47" west, 6,213.99 feet; thence south 23°36'50" east, 2,985.54 feet; thence south 78°51'00" east, 5,087.51 feet; thence south 11°09'00" west, 6,499.77 feet; thence north 78°50'00" west, 6,122.13 feet; thence north 11°08'47" east, 4,055.50 feet; thence south 67°22'48" west, 4,277.00 feet; thence north 22°37'12" west, 6,196.46 feet to the POINT OF BEGINNING.

The area described contains approximately 2,622 acres in Lake County.

The purpose of the proposed withdrawal is to protect the Over-the-Horizon Backscatter West Coast Transmitter Site located in the Buffalo Flat area near Christmas Valley, Oregon.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal in approved prior to that date. The temporary uses which may be permitted during the segregative period are leases, licenses, permits, rights-of-away, and disposal of mineral or vegetative resources other than under the mining laws.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: February 13, 1989.

[FR Doc. 89–4224 Filed 2–22–89; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Negotiation for Concession Permit; Eastern National Park and Monument Assn. Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Eastern National Park and Monument Association, Inc., authorizing it to continue to provide vending machine services for the public at Big South Fork National River and Recreation Area for a period of four (4) years from April 1, 1989, through March 31, 1993.

EFFECTIVE DATE: April 24, 1989.

ADDRESS: Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on March 31, 1989, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Date: February 7, 1989.

Robert L. Deskins,

Acting Regional Director, Southeast Region.

[FR Doc. 89–4204 Filed 2–22–89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-285]

Certain Chemiluminescent Compositions and Components Thereof and Methods of Using the Same; Commission Determinations; Luc Noel

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined (1) to deny the Investigative Staff's petition for reconsideration of a Commission determination to review and remand to the presiding ALJ an ID (Order No. 11) terminating respondent Luc Noel from

the above-captioned investigation based on a consent order and (2) to affirm its determination and order of January 12, 1989 (54 FR 2235 (January 19, 1989)).

ADDRESSES: Copies of the petition for reconsideration and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Thomas J. O'Connell, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC., telephone 202–252–1108. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On December 12, 1988, the presiding ALJ issued an ID granting the renewed joint motion of complainant American Cyanamid Company and respondent Luc Noel to terminate the investigation with respect to Luc Noel on the basis of a proposed consent order. On January 12, 1989, the Commission determined to review and remand to the presiding ALJ the ID for action consistent with its order of remand. On January 30, 1989, the Commission Investigative Staff petitioned the Commission for reconsideration of its detemination to review and remand the ID to the presiding ALJ. No comments in opposition to the petition for reconsideration were received.

Having examined the petition for reconsideration, the Commission, pursuant to Commission interim rule 210.61, has determined to deny it and to affirm its order of remand of January 12, 1989.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), and sections 210.61 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33070 (Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: February 15, 1989.

[FR Doc. 89–4199 Filed 2–22–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731–TA–426–428 (Preliminary)]

Certain Small Business Telephone Systems and Subassemblies Thereof From Japan, Korea, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan, Korea, and Taiwan of small business telephone systems and subassemblies thereof,[2] provided for in subheadings 8504.40.00, 8517.10.00, 8517.30.20, 8517.30.25, 8517.30.30, 8517.81.00, 8517.90.10, 8517.90.15, 8517.90.30, 8517.90.40, and 8518.30.10 of the Harmonized Tariff Schedule of the United States,[3] that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On December 28, 1988, a petition was filed with the Commission and the Department of Commerce by American Telephone & Telegraph Co., Parsippany, NJ, and Comdial Corp., Charlottesville, VA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of small business telephone systems and subassemblies thereof from Japan, Korea, and Taiwan. Accordingly, effective December 28, 1988, the Commission instituted preliminary antidumping investigations Nos. Nos. 731–TA–426–428 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 6, 1989 (54 FR 495). The conference was held in Washington, DC, on January 18, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 13, 1989. The views of the Commission are contained in USITC Publication 2156 (February 1989), entitled "Certain Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan: Determinations of the Commission in Investigations Nos. 731–TA–426–428 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: February 15, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–4197 Filed 2–22–89; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] For the purposes of these investigations, the term "small business telephone systems and subassemblies thereof" means telephone systems with intercom or internal calling capability and total nonblocking port capacities of between 2 and 256 ports, units of such systems, and subassemblies for use principally in such units, including control and switching equipment, circuit cards and modules, and proprietary corded telephone sets and consoles, whether complete or incomplete, assembled or unassembled.

[3] Formerly provided for in items 682.60, 684.57, 684.58, and 684.59 of the Tariff Schedules of the United States.

[Investigation No. 337-TA-286]

Certain Track Lighting System Components, Including Plugboxes; Commission Decision Not To Review Initial Determination Amending Complaint and Notice Investigation To Add an Additional Respondent

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 15) issued by the presiding administrative law judge (ALJ) granting in part complainant Cooper Industries, Inc.'s motion to add two respondents to the above-captioned investigation. The ID amends the complaint and notice of investigation by adding Tienmood Enterprises Co., Ltd. of Taipei, Taiwan as a respondent.

ADDRESSES: Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, Telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1090.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On December 13, 1988, the presiding ALJ issued an ID amending the complaint and notice of investigation to add the above firm as respondent. No petitions for review of the ID or government agency comments were received. This action is taken under the authority of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: February 14, 1989.

[FR Doc. 89–4198 Filed 2–22–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–286]

Certain Track Lighting System Components, Including Plugboxes; Commission Decision Not to Review an Initial Determination Amending the Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 3) issued by the presiding administrative law judge (ALJ) amending the notice of investigation in the above-captioned investigation.

ADDRESS: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: George W. Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1090. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On September 2, 1988, the presiding ALJ issued an ID amending the notice of investigation to reflect amendments to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) effected by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 stat. 1107). The notice of investigation was amended to delete the reference to the former requirement that the industry in the United States be efficiently and economically operated and to replace the phrase "effect or tendency" with the phrase "threat or effect" with respect to substantial injury to an industry in the United States.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and interim rule 210.53 (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: February 14, 1988.

[FR Doc. 89–4200 Filed 2–22–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–286]

Certain Track Lighting System Components, Including Plugboxes; Amendment of Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the notice of investigation in the above-captioned investigation has been amended in the manner described below.

ADDRESS: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1574. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On September 2, 1988, the presiding administrative law judge issued an initial determination (ID) amending the notice of investigation and directing the Commission Secretary, in the absence of Commission review of the ID, to publish the amendment to the notice of investigation in the **Federal Register**. The Commission has determined not to review the ID. Accordingly, paragraph (1) of page 2 of the notice of investigation has been amended to read as follows:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the unlawful importation into the United States of certain track lighting system components, including plugboxes, or in their sale, by reason of alleged (1) common law trademark infringement or (2) false representation of source, the threat or effect of which is to destroy or substantially injure an industry in the United States.

By order of the Commission.

Issued: February 14, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–4201 Filed 2–22–89; 8:45 am]

BILLING CODE 7020–02–M

[332–257]

Service Sector Profiles and Barriers to Trade in Services

AGENCY: International Trade Commission.

ACTION: Extension of time for submitting written statements.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Kollins (202–252–1441), Office of Industries, U.S. International Trade Commission, Washington, DC 20436.

SUMMARY: Notice is hereby given that the date for submitting statements has been extended for part (3) of the 3-part investigation. The public comment period pertaining to part (3) of the study, described below, has been extended from January 2, 1989 to June 30, 1989.

Part (3) of the report, which is scheduled to be transmitted to USTR on or before September 25, 1989, consists of a summary profile of certain service sectors in foreign countries and an assessment of the effect on U.S. service industries of the removal of foreign measures which impede U.S. participation in the respective foreign service markets. As requested by USTR, the Commission will prepare foreign industry profiles only for those countries in which restrictive measures are identified through an interagency process coordinated by USTR.

Notice of the investigation was published in the **Federal Register** of August 17, 1988 (53 FR 31111).

Issued: February 13, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-4202 Filed 2-22-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31397]

Buckingham Branch Railroad Co.—Acquisition and Operation Exemption—Line of CSX Transportation, Inc. Between Bremo and Dillwyn, VA

Buckingham Branch Railroad Company (Buckingham) filed a notice of exemption to purchase and to operate approximately 17.3 miles of rail line of CSX Transportation, Inc. between Bremo, VA (milepost 0.0) and Dillwyn, VA (milepost 17.3). The transaction was expected to be consummated on or about February 1, 1989.

Any comments must be filed with the Commission and served on: Robert E. Bryant, Buckingham Branch Railroad Company, P.O. Box 336, Dillwyn, VA 23936.

Buckingham has certified that no properties qualifying for inclusion in the National Register of Historic Places will be transferred as a result of this transaction.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 15, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-4019 Filed 2-22-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; FMC Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 15, 1989, a proposed Consent Decree in *United States v. FMC Corporation*, Civil Action No. 2:88-0007, was lodged with the United States District Court for the Southern District of West Virginia. The Consent Decree requires defendant to pay a civil penalty of $180,000 and to comply with the Clean Water Act, 33 U.S.C. 1251 *et seq.* at its Nitro facility.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. FMC Corporation*, DOJ Ref. 90-5-1-1-3012.

The proposed Consent Decree may be examined at the Office of the United States Attorney, United States Court House, 500 Quarrier Street, Charleston, West Virginia 25332. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-4121 Filed 2-22-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Settlement Agreement

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on *February 13, 1989*, a proposed consent decree in *United States v. Seafab Metal Corporation*, Case No. C88-0087C (W.D. Wash.), was lodged with the United States District Court for the Western District of Washington. The consent decree requires Seafab Metal Corporation to conduct groundwater and soil sampling and analysis in connection with its facility located on Harbor Island in Seattle, Washington, pursuant to section 6934 of the Resource Conservation and Recovery Act, 42 U.S.C. 6934, and a Court order entered on June 2, 1988. The consent decree requires Seafab to perform the sampling and analysis according to a Work Plan and also requires Seafab Metal Corporation to pay a civil penalty of $61,500.

The Department of Justice will receive written comments relating to the Consent Decree for thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Seafab Metal Corporation*, Case No. C88-0087C (W.D. Wash.).

The Consent Decree may be examined at the Office of the United States Attorney for the Western District of Washington, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington 98104; at the Region 10 Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed settlement agreement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, 10th Street and Pennsylvania Avenue, Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $1.90 for reproduction cost of the Consent Decree, or in the amount of $9.40 for both the consent decree and the Work Plan, payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89-4120 Filed 2-22-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—OSF/Open Software Foundation, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on February 2, 1989, disclosing changes in its membership. The additional notification was filed for the purpose of extending the protections of Section 4 of the Act limiting recovery of antitrust plantiffs to actual damages under specific circumstances.

On August 8, 1988, OSF and the Open Software Foundation Research Institute, Inc. (the "Institute") filed its original notification pursuant to section 6(a) of

the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988, 53 FR 34594. On November 4, 1988, OSF filed an additional written notification. The Department published a notice in the **Federal Register** in response to this additional notification on November 25, 1988, 53 FR 47773.

The identities of the new, non-voting members of OSF are as follows:

Institute for Information Industry
University of Guelph
Convex Computer Corporation
Intergraph
Omron Tateishi Electronics Comp.
Dell Computer Corporation
University of Michigan
EDUCOM
DECUS U.S. Chapter (Digital Equipment Corporation User Group)
NASA/Goddard Space Flight Center
Sequent Computer Systems, Inc.
MIPS Computer Systems
Canon Inc.
HCR Corporation
Lachman Associates, Inc.
Synthesis Software Solutions, Inc.
GM/EDS C4 Program
Shell International
National Institute for Higher Education
Oracle Corporation
Ecole Nationale Supeneure d'Ingenieers Electricienf de Grenoble ("E.N.S.I.E.G.")
CSK Corporation
University of Maryland
Carnegie Mellon University
Micro Focus
Addamax Corporation
GKSS Forschungszentrum Geesthacht GmbH
Institut d'Informatique et de Mathematiques Appliquees de Grenoble ("IMAG")
Texas Instruments
Compagnie Europpene des Techniques de L'Ingenierie Assistee ("CETIA")
Samsung Group
Chalmers University of Technology
Institut National de Recherche en Informatique et en Automatique ("INRIA")
Project Athena, Massachusetts Institute of Technology
Centrum vorr Wiscunde en Informatica ("CWI")
Xerox Corporation
Tolerant Systems

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-4118 Filed 2-22-89; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on January 23, 1989 disclosing that there have been three additions to the membership of PCA. These additional members are Coplay Cement Company, effective November 1, 1988; National Cement Company, Inc., effective January 1, 1989; and National Cement Company of California, Inc., effective January 1, 1989. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Accordingly, at present the members of the PCA are those companies listed below:

United States

Aetna Cement Corporation
Alamo Cement Company
Alaska Basic Industries
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic, Inc.
Blue Circle, Inc.
Blue Circle West Inc.
Calaveras Cement Company
CalMat Co.
Capitol Aggregates, Inc.
Capitol Cement Corporation
Continental Cement Company Inc.
Coplay Cement Company
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
Glens Falls Cement Company, Inc.
Hawaiian Cement
Ideal Basic Industries, Inc.
Independent Cement Corporation
Lafarge Corporation
Lehigh Portland Cement Company
LoneStar-Falcon
Lone Star Industries, Inc.
Lone Star Northwest
Medusa Cement Corporation
Missouri Portland Cement Company
The Monarch Cement Company
Moore McCormack Cement, Inc.
National Cement Company, Inc.
National Cement Company of California, Inc.
Northwestern States Portland Cement Co.
Phoenix Cement Company
Rinker Materials Corporation
RMC Lonestar
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Company
Tarmac-LoneStar, Inc.
Tilbury Cement Company

Canada

Federal White Cement Ltd.
Ideal Cement Company Ltd.
Inland Cement Limited
Lafarge Canada Inc.
Lake Ontario Cement Limited
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Corporation
Tilbury Cement Limited

Mexico

Instituto Mexicano del Cemento y del Concreto (IMCYC)
Cementos Acapulco, S.A.
Cementos Apasco, S.A.
Cementos de Chihuahua, S.A.
Cementos Mexicanos, S.A.
Cementos Moctezuma, S.A.
Cooperativa de Cementos Cruz Azul
Cooperativa de Cementos Hidalgo

Affiliate Members

Cement and Concrete Promotion Council of Texas
Florida Concrete and Products Association
Mississippi Concrete Industries Association
North Central Cement Promotion Association
Northern California Cement Promotion Group
Northwest Concrete Promotion Group
Rocky Mountain Cement Promotion Council
South Central Cement Promotion Association

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C-E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Company
F. L. Smidth and Company
Claudius Peters, Inc.
Polysius Corp.
The Fuller Company
W.R. Grace & Company

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5,

1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, and August 23, 1988 PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 28183), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (53 FR 35935), and September 28, 1988 (53 FR 37883) respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-4119 Filed 2-22-89; 8:45am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on March 8 and 9, 1989 in Room S-2217, U.S. Department of Labor, Frances Perkins Building, Third Street and Constitution Ave., NW., Washington, DC. The meeting is open to the public and will start at 9:00 a.m.

Agenda items will include reports from the work groups on competent persons training and construction inspection scheduling, a Bureau of Labor Statistics update, a discussion of *Fatal Facts* policies, a discussion on Safety training for construction supervisors and a report on NIOSH activities in construction safety.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anybody wishing to make an oral presentation should notify the Division of Consumer Affairs, before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and brief outline of the content of the presentation.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, Third Street and Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8615.

The official record of the meeting will be available for public inspection and copying at the OSHA Docket Office, Room N-2439, Frances Perkins Building, Third Street and Constitution Ave., NW., Washington, DC 20210. Telephone 202-523-8615.

Signed at Washington, DC this 21st day of February 1989.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 89-4367 Filed 2-22-89; 8:45 am]

BILLING CODE 4510-26-M

MERIT SYSTEMS PROTECTION BOARD

Performance Improvement Periods in Chapter 43 Actions

AGENCY: Merit Systems Protection Board.

ACTION: Notice of Opportunity to File Amicus Briefs.

SUMMARY: The Merit Systems Protection Board provides an opportunity to file amicus briefs on significant issues concerning the proper interpretation and application of 5 U.S.C. 4302(b)(6), 5 U.S.C. 4303(c)(2)(A) and 5 CFR 432.203(b).

DATE: Amicus briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before March 24, 1989.

ADDRESS: All briefs shall be captioned "Performance Improvement Periods" and entitled "Amicus Brief." All briefs shall also contain separate, numbered headings for each issue discussed. The original and seven (7) copies of each brief submitted in response to this notice shall be filed with the Office of the Clerk of the Board and addressed to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, ATTN: Performance Improvement Periods, 1120 Vermont Avenue NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Matthew D. Shannon, Counsel to the Clerk, Merit Systems Protection Board, (202) 653-7200.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board has before it a number of cases which raise related issues concerning the proper interpretation and application of 5 U.S.C. 4302(b)(6), 5 U.S.C. 4303(c)(2)(A), and 5 CFR 432.203(b). The Office of Personnel Management has intervened in one case and expressed its preliminary views concerning the interpretation of applicable legal standards. The Board is seeking additional briefs from interested parties addressing the issues noted below.

As used in the following questions, the term "performance improvement period" ("PIP") refers to the opportunity required by 5 U.S.C. 4302(b)(6) and 5 CFR 432.203(b) (1988). Additionally, unless otherwise stated, any instance of unacceptable performance referenced in these questions is assumed to have occurred within the 1-year period specified in 5 U.S.C. 4303(c)(2)(A).

1. Under 5 U.S.C. 4303(c)(2)(A) an agency may base its decision on instances of unacceptable performance which occurred during the 1-year period preceding the advance notice and which were stated in the notice. Is this provision meaningless unless agencies are permitted to rely on unacceptable performance which occurs before or after the PIP but within the 1-year period?

2. If an employee's performance is acceptable or better during the PIP, but then subsequently becomes unacceptable, may the agency take action based on the subsequent performance without informing the employee of the unacceptable performance by providing another PIP? If not, how long a time period must elapse after the initial PIP before a new PIP is required?

3. If agencies are not permitted to rely on pre- or post-PIP performance, apportioning a numerical standard during the PIP may not be feasible or may require agencies to lower the performance standards in some cases. For example, if an employee commits one error under a standard which allows only one error per year, construing the standard to allow the employee to commit an additional error during the PIP would be the equivalent of permitting two errors per year. However, if the employee is allowed no errors during the PIP, it could be argued

that the agency utilized an absolute performance standard during the PIP, which deprived the employee of a bona fide opportunity to improve. In such cases, how can the agency's right to set performance standards be reconciled with the employee's right to an opportunity to improve?

4. If agencies are permitted to consider unacceptable performance that occurs before or after the PIP where the employee's performance during the PIP is acceptable or better, what guidelines should be used in wieghting the performance during the various time periods? In addressing this issue, the following questions should be considered.

a. Where a numerical performance standard requires a minimum production or specifies the maximum errors on a yearly basis, can the numerical standard be apportioned over the rating period? For example, if the employee's standard allows a maximum of twelve mistakes per year, should an employee's performance be considered unacceptable if the employee makes two mistakes during the first month of the rating period?

b. At the time an agency places an employee on a PIP, the employee may already have exceeded the number of errors allowed under the applicable performance standard. What criteria should be applied to determine whether or not an employee has demonstrated acceptable performance during the PIP in such cases? If the employee committed no additional errors during the PIP in this example, would a rule which permitted the agency to rely on the employee's pre-PIP errors make the employee's right to an opportunity to improve meaningless?

c. Should there be different guidelines for weighing pre- or post-PIP unacceptable performance against PIP performance which is acceptable or better with respect to standards which do not allow for numerical measurement?

The Board may determine it would be beneficial to hold oral argument concerning these issues. Any party interested in participating in such argument should indicate such interest in any filing made in response to this notice.

Date: February 17, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-4234 Filed 2-22-89; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-09]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

DATE AND TIME: March 6, 1989, 8:30 a.m. to 5 p.m., March 7, 1989, 8:30 a.m. to 2 p.m.

ADDRESS: Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald White, Code EB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1470).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, and work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Life Sciences Subcommittee provides advice to the Life Sciences Division concerning all of its programs in the space life sciences. The Subcommittee will meet to discuss the status of the Life Sciences Budget, plan subcommittee tasks, functions, strategy and future actions, and receive reports from the Space Science and Applications Committee and the Aerospace Medicine Advisory Committee. The Subcommittee is chaired by Dr. Francis J. Haddy and is composed of 17 members. The meeting will be closed on Tuesday, March 7, from 10:45 a.m. to 11:45 a.m. to discuss and evaluate qualifications of candidates being considered for membership on the subcommittee. Such discussions would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the capacity of the room (approximately 45 including Subcommittee members).

Type of Meeting: Open—except for a closed session as noted in the agenda below.

Agenda

Monday March 6

8:30 a.m.—Introduction and Chairman's Remarks.

8:45 a.m.—Office of Space Science and Applications (OSSA) Status and the Life Sciences Budget.

9:30 a.m.—Life Sciences Status.

10:30 a.m.—Committee Charge from the Space Science and Applications Advisory Committee (SSAAC).

1 p.m.—Activities of the Aerospace Medicine Advisory Committee.

2 p.m.—The Space Biology Initiative.

3:30 p.m.—Report on NASA/NIH Interagency Working Group.

4:15 p.m.—The NASA-Specialized Center of Research (N-SCOR) Program.

5 p.m.—Adjourn.

Tuesday, March 7

8:30 a.m.—Report on Space Station and Life Sciences.

9:45 a.m.—Committee Tasks and Functions.

10:45 a.m.—Closed Session.

1 p.m.—Committee Strategy and Actions.

2 p.m.—Adjourn.

February 16, 1989.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-4122 Filed 2-22-89; 8:45 am]

BILLING CODE 7510-01-M

[Notice 89-10]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATE AND TIME: March 14, 1989, 9 a.m. to 5 p.m., and March 15, 1989, 8:30 a.m. to 12 noon.

ADDRESS: National Aeronautics and Space Administration, Room 7002, Federal Office Building 6, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code ADA-2, National Aeronautics and Space

Administration, Washington, DC 20546, 202/453–8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Dr. John L. McLucas and is composed of 27 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, aerospace medicine, space science and applications, space systems and technology, space station, commercial programs, and history, as they relate to NASA's activities.

The meeting will be closed to the public from 8:30 a.m. to 10 a.m. on March 15 for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open—except for a closed session as noted in the agenda below.

Agenda

March 14, 1989

9 a.m.—Introductory Remarks.
9:10 a.m.—Science in the Exploration Program.
10 a.m.—Fiscal Year 1990 Program and Future Implications.
10:30 a.m.—Discussion.
1 p.m.—Space Studies Board.
2 p.m.—Proposed Study of NASA/University Affairs.
3 p.m.—Committee Reports.
5 p.m.—Adjourn.

March 15, 1989

8:30 a.m.—Closed Session—Prospective Members.
10 a.m.—Status of Space Policy.
11 a.m.—Other Business.
12 noon—Adjourn.

February 16, 1989.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–4123 Filed 2–22–89; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–602]

University of Texas; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Construction Permit No. CPRR–123 issued to the University of Texas (UT or the applicant) for the TRIGA Mark II research reactor. The facility is located on the applicant's site at the University of Texas Balcones Research Center, Austin, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPRR–123 to December 31, 1989. The proposed action is in response to the applicant's request dated October 17, 1988, as modified by letter dated November 23, 1988.

The Need for the Proposed Action

The proposed action is needed because the construction of the facility is not yet fully completed.

Environmental Impact of the Proposed Action

Since the proposed action involves extending the construction permit, radiological impacts are not affected by this action. There are no radiological impacts associated with this action. The impacts that are involved are all non-radiological and are associated with continued construction.

Based on the foregoing, the NRC staff concludes that the proposed extension of the construction permit would have no significant environmental impact.

Alternatives Considered

A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction of the facility. This would result in denial of the benefit of research, education, and training. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore small areas to their original state. This would be a slight environmental benefit, but much outweighed by the economic losses from denial of use of a facility that is nearly completed. Therefore, this alternative is rejected.

Another alternative is to take no action on the request for extension. The construction permit would not be deemed to have expired until the application has been finally processed (10 CFR 2.109). In effect the construction permit could be in effect as long as no action was taken on a timely application for an extension. To take no action on the applicant's request would not be responsive; therefore, this alternative is rejected.

Alternative Use of Resources

This action does not involve the use of resources other than those evaluated in the Environmental Assessment prepared as part of the NRC staff's review of the construction permit application dated May 13, 1985.

Agencies and Persons Consulted

The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated October 17, 1988, as modified by letter dated November 23, 1988, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 15th day of February 1989.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89–4163 Filed 2–22–89; 8:45 am]

BILLING CODE 7590-01-M

Statement of Policy on Litigation of TMI-Related Issues in Power Reactor Operating License Proceedings; Revocation of Superseded Policy Statement Concerning TMI-Related Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; revocation of policy statement.

SUMMARY: The Nuclear Regulatory Commission is issuing an updated policy statement on the manner in which the applicant and any intervening party to an NRC operating license proceeding can raise a challenge to those requirements imposed upon utilities seeking an operating license as a result of the March 1979 accident at Three Mile Island, Unit 2. In addition, the Commission is revoking another policy statement relating to requirements imposed after the Three Mile Island accident as superseded by subsequent agency action.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Bollwerk, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–1634.

SUPPLEMENTARY INFORMATION: Following the march 1979 accident at Three Mile Island, Unit 2 (TMI–2), the Commission took a number of regulatory measures designed to provide the appropriate mechanisms for assimilating the regulatory changes resulting from TMI–2 into the ongoing process for facility licensing. Principal among these was the Commission's issuance of policy guidance on how the regulatory requirements imposed as a result of the TMI–2 incident were to be considered in the context of ongoing adjudicatory licensing proceedings and its suspension and later revision of the existing rule by which the initial decision of an Atomic Safety and Licensing Board authorizing issuance of a construction permit or an operating license was considered to be immediately effective. In the years since the accident, however, the Commission has taken a variety of responsive regulatory actions that raise questions about the continuing efficacy of its earlier policy statements concerning litigation of TMI-related issues and the suspension of the immediate effectiveness rule. Since the accident, the agency has identified various "lessons learned" from the TMI–2 accident, which are embodied in NUREG–0737, "Clarification of TMI Action Plan Requirements" as well as specific licenses and orders. It also has implemented changes to update regulatory requirements on the basis of these "lessons." *See, e.g.*, 10 CFR 50.44 (hydrogen control); 50.47, 50.54(s), and Appendix E to Part 50 (emergency planning); 50.54(w) (property insurance); Part 55 (operator training). The NRC staff has advised the Commission that all regulatory changes needed to implement NUREG–0737 have been completed and that compliance with existing regulations and orders is a sufficient response to all applicable TMI–2 accident "lessons learned." As a result, the Commission now believes further action is appropriate regarding the policy established by several policy statements published after the TMI–2 accident and discussed below.

I. Commission Policy on Litigation of TMI-Related Issues in Power Reactor Operating License Proceedings

Current Commission policy on the appropriate parameters for applicant and intervenor litigation of TMI-related issues in operating license proceedings is set forth in a Commission Policy Statement, CLI–80–42, 12 NRC 654 (1980) (45 FR 85236; Dec. 24, 1980). However, the implementation of TMI "lessons learned" and other events have rendered much of the background discussion in this 1980 policy statement outdated and confusing. Also, while the Commission previously noted that very few operating license hearings have involved the litigation of these issues (48 FR 13987, 13988; Apr. 1, 1983), there nonetheless are facilities under construction for which certain specific guidance afforded by the policy statement could be pertinent. Accordingly, the Commission has decided to rescind that 1980 policy statement, but to provide the following supplemental guidance for the itigation of TMI-related issues in operating license proceedings:

In conjunction with existing NRC regulations, the guidance for new operating licenses found in NUREG–0737, "Clarification of TMI Action Plan Requirements," can serve as the basis upon which the NRC staff makes a determination about whether an applicant meets the necessary requirements for issuance of an operating license as the NUREG–0737 guidance interprets, refines, or quantifies the general language of existing regulations. The parties to a proceeding may challenge the guidance in NUREG–0737 as unnecessary on the one hand or insufficient on the other to meet existing regulations. Parties to a proceeding, the Licensing Boards, and the Appeal Boards also should heed the additional Commission guidance regarding the litigation of TMI-related issues given in *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI–81–5, 13 NRC 361 (1981).

II. Policy Statement Relating to Immediate Effectiveness

Prior to the Commission's action in November 1979 adopting the now rescinded Appendix B to 10 CFR Part 2 (44 FR 65049),[1] the Commission's Post-TMI policy relating to immediate effectiveness of Licensing Board initial decisions authorizing the issuance of construction permits and operating licenses was set forth in an October 1979 statement, "Interim Statement of Policy and Procedure" (44 FR 58559). This policy statement was superseded by the November 1979 action and is hereby formally rescinded. The Commission's existing immediate effectiveness procedures are found in 10 CFR 2.764.

Dated at Rockville, MD, this 16th day of February, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–4168 Filed 2–22–89; 8:45 am]

BILLING CODE 7590–01–M

[1] The existing Appendix B to Part 2, "General Statement of Policy and Procedures Concerning Petitions Pursuant to 2.802 for Disposal of Radioactive Waste Streams Below Regulatory Concern," which was issued on August 29, 1986 (51 FR 30839), is not related to this policy statement.

Regulatory Information Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The overall theme of this conference is to communicate directly to the licensed community our goals and objectives and the bases on which they have been established. Having conveyed this understanding, we plan to relate it directly to current and near term regulatory issues. Secondarily, we plan to focus attention on differences between the NRC view of industry performance which causes us to pursue specific courses of action to improve safety, and industry's view of identical topics.

Utility managers and supervisors seldom have the opportunity to interface with NRC managers where technical issues and regulatory philosophy can be discussed without creating a confrontational environment. This conference will provide a unique forum for nonconfrontational communications between NRC management and senior managers in the nuclear industry.

The conference will cover major issues related to power plant operations. The progression of topics will proceed

from general to specific, with emphasis on operations and the NRC view as to how to achieve improved operational safety based on our experience in carrying out our regulatory mission.

DATE: The Conference will be held April 18, 19, and 20, 1989.

ADDRESS: The Conference will be held at The Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036 Telephone (202) 347–3000.

FOR FURTHER INFORMATION CONTACT: S. Singh Bajwa, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–1109.

SUPPLEMENTARY INFORMATION:

Registration: There is a registration fee of $195.00. Questions regarding registration should be directed to Science Applications International Corporation, 1710 Goodridge Drive, MS G–6–1, McLean, Virginia 22101, Attn: Ms. Pamela Haggard, Telephone (703) 448–6484.

Participation: This conference is open to the general public; however, advanced registration is required.

The following is the preliminary program for the conference:

April 18: 9:00 am–5:00 pm

1. Introductory and Opening Remarks.
2. Plenary Session: Improving Operational Safety.
3. Luncheon Speaker: Chairman Lando W. Zech, Jr.
4. Two Breakout Session (pm).
(a) Operating Experience.
(b) Substandard Material and Equipment.

April 19: 9:00 am–5:00 pm

1. Two Breakout Session (am).
(a) Evaluation of Plant Performance.
(b) Regulatory Issues.
2. Luncheon Speaker: Commissioner Kenneth Rogers.
3. Two Breakout Sessions (pm).
(a) NRC Inspection Experience.
(b) Current Technical Issues.

April 20: 9:00 am–3:00 pm.

1. Two Breakout Sessions (am).
(a) Human Factors/Operator Licensing.
(b) Enforcement and Investigations.
2. No Organized Luncheon Scheduled.
3. Plenary Session: Severe Accident Issues.
4. General Closing Remarks.
5. Adjourn.

Note: There will be a question/answer period after each session.

Round Table Sessions April 18, 19, & 20, 1989

If sufficient interest is expressed by the conference registrants, provisions will be made to conduct roundtable discussions, in parallel with the scheduled sessions, on any or all of the following subjects:

- Safeguards and Security.
- Performance-Based Quality Assurance.
- Outage Planning.
- State Participation.
- State-of-the-Art Instrumentation.
- New Part 20 Implementation.
- Risk Assessment Applications.
- Incident Response Program.
- Backfitting Program including CRGR Process.
- Perspective on Recent Executive Orders Concerning FEMA Programs.

Dated in Rockville, Maryland this 16th day of February 1989.

For the Nuclear Regulatory Commission.

Valeria H. Wilson,

Acting Chief Planning, Program and Management Support Branch, Office of Nuclear Reactor Regulation.

[FR Doc. 89–4164 Filed 2–22–89; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.62, "Standard Format and Content for the Safety Analysis Report for Onsite Storage of Spent Fuel Storage Casks," provides guidance on the type of information needed by the NRC staff for its evaluation of a Safety Analysis Report for storage of spent fuel in casks at a nuclear reactor site. The guide also provides a format for submitting this information.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 16th day of February 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 89–4165 Filed 2–22–89; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff and evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.158, "Qualification of Safety-Related Lead Storage Batteries for Nuclear Power Plants," describes a method acceptable to the NRC staff for qualification of safety-related lead storage batteries for nuclear power plants. This guide endorses, with certain exceptions, IEEE Std 535–1986, "IEEE Standard for Qualification of Class 1E Lead Storage Batteries for Nuclear Power Generating Stations."

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of

Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price.

Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 16th day of February 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research

[FR Doc. 89–4166 Filed 2–22–89; 8:45 am]

BILILNG CODE 7590-01-M

[Docket No. 50–316]

Indiana Michigan Power Co.; Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 108 to Facility Operating License No. DPR–74, issued to the Indiana Michigan Power Company (the licensee), which revised the Technical Specifications (TSs) for operation of the Donald C. Cook Nuclear Plant, Unit No. 2, located in Berrien County, Michigan. The amendment is effective as of the date of issuance.

The amendment revise the moderator temperature coefficient, shutdown margin, and engineered safeguards actuation requirements to reflect the steamline break analysis performed by Advanced Nuclear Fuels Corporation for D.C. Cook Unit 2.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Part I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing in connection with this action was published in the **Federal Register** on November 25, 1988 (53 FR 47782). No request for hearing or petition to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on February 15, 1989, at 54 FR 6976.

For further details with respect to this action, see (1) the application for amendment dated August 15, 1988, (2) Amendment No. 108 to License No. DPR–74, and (3) The Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Rockville, Maryland, this 15th day of February 1989.

For the Nuclear Regulatory Commission.

John Stang,

Project Manager, Project Directorate III–I, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–4161 Filed 2–22–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–271–OLA; ASLBP No. 87–547–02–LA]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station); Oral Agreement

February 16, 1989.

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. James H. Carpenter
Gustave A. Linenberger, Jr.

Oral Argument

Notice is hereby given that, in accordance with the Licensing Board's Memorandum and Order (Telephone Conference Call, 1/10/89), dated January 12, 1989, oral argument as set forth in 10 CFR 2.1113, concerning Contention 1, will commence at 9:30 a.m. on Wednesday, March 22, 1989, at the U.S. District Court, Post Office and Courthouse Building, 204 Main Street, Brattleboro, Vermont. The argument will continue, to the extent necessary, on Thursday, March 23, 1989, commencing at 9:00 a.m. Document filing schedules, as set forth in the January 12, 1989 Memorandum and Order, remain in effect.

In accordance with 10 CFR 2.715(a), the Board will hear oral limited appearance statements at the outset of the oral argument, on Wednesday, March 22, 1989. Any person not a party to the proceeding will be permitted to make such a statement, either orally or in writing, setting forth his or her position on the matters at issue in Contention 1 (concerning the fuel pool cooling system). These statements do not constitute testimony or evidence in this proceeding but the Board may request the parties to address questions that may be raised. The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. Written statements may be submitted at any time. Written statements and requests for oral statements should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of such a statement or request should also be served on the Chairman, Atomic Safety and Licensing Board, EWW/439, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland this 16th day of February 1989.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 89–4169 Filed 2–22–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–24 and DPR–27, issued to Wisconsin Electric Power Company, for operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2, located at the licensee's site in Manitowoc County, Wisconsin.

The proposed amendment would revise the provisions in the Point Beach Nuclear Plant, Unit Nos. 1 and 2, Technical Specifications (TS's) relating to fuel storage. Specifically, the proposed amendment would increase the U–235 content per axial centimeter for OFA fuel assemblies from 39.4 to 46.8 grams and would permit the use of axial fuel blankets. The increase in U–

235 content for the OFA fuel assemblies corresponds to an increase in fresh fuel enrichment from the current limit of 4.0 to 4.75 weight percent U–235. The U–235 content permitted for standard fuel assemblies would remain unchanged.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 27, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days to the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 6, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the local public document room at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 15th day of February 1989.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–4161 Filed 2–22–89; 8:45 am]

BILLING CODE 7509–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26545; File No. SR–NASD–88–19]

Self-Regulatory Organizations; Amended Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the OTC Bulletin Board Display Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s(b)(1), notice is hereby given that on February 2, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission an amended rule change proposal as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the amended rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 9, 1988, the NASD submitted a proposed rule change (designated File No. SR–NASD–88–19), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to establish the OTC Bulletin Board Display Service ("Bulletin Board Service" or "Service"), respecting securities traded over-the-counter ("OTC") that are not included in

the NASDAQ System or listed on a national securities exchange (collectively referred to as "Bulletin Board Securities"). Basically, the Service constitutes an electronic quotation medium that market makers can employ to enter quotes or indications of trading interest in Bulletin Board Securities. Market makers will also have the capacity to update their entries on a real-time basis. Originally, the NASD proposed to provide the Service for a pilot period of six months. No fee was to be charged during the pilot, but a cost-based charge was planned thereafter. During the pilot phase, real-time access to the Service would be limited to NASD member firms utilizing NASDAQ terminal devices or NASDAQ Workstation units authorized for Level 2 or Level 3 NASDAQ service. The principal operational features of the Service were full described in File No. SR-NASD-88-19 under Item 3, "Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change." [1] Because that material remains unchanged, it is hereby incorporated by reference.

In making this filing, the NASD has incorporated several modifications that reflect a working agreement between the NASD and Commerce Clearing House, Inc./National Quotation Bureau, Inc. ("CCH/NQB"). The NASD intends to implement the Service only if it is approved by the Commission in the form provided by this Amendment to File No. SR-NASD-88-19. Accordingly, the NASD reserves the right to withdraw Amendment No. 2 to File No. SR-NASD-88-19 should the Commission (i) determine to approve the Service in a form that either CCH/NQB or the NASD determines, in good faith, is materially different from this Amendment or (ii) issue an approval order conditioned upon making further modifications that either CCH/NQB or the NASD determines, in good faith, to be materially different from this Amendment. If either of the foregoing occurs, the NASD will withdraw Amendment No. 2 and, prior to implementing the Service in any form, submit another Rule 19b-4 filing to the Commission and take such other action that may be required to cause the Commission to order a new comment period with respect to the Service. These actions would preserve CCH/NQB's rights to comment in full on the entire Service if this Amendment is withdrawn.

The instant filing proposes the following amendments to the terms of the pilot program for the Bulletin Board Service:

(1) The pilot operation would run for a term of one year, with actual operations commencing shortly after the date of the Commission's approval order.[2]

(2) During the pilot, NASD members utilizing NASDAQ authorized equipment will not incur a separate service charge for access to market makers' input captured in the Service's data base.[3]

(3) During the pilot, NASD members that register as market makers in Bulletin Board Securities ("Market Maker Participants" or "Participants") will incur a charge for displaying their trading interest through the service. Specifically, a Market Maker Participant will pay $85 per month for the first 10 securities listings (or any part thereof), and $37 per month for each additional lot of five listings (or any part thereof) or $74 per month for each additional lot of ten listings (or any part thereof).[4]

(4) For the pilot term, the NASD will provide to CCH/NQB, twice daily, a static transmission of data captured in the Service's data base.[5] The first transmission will occur at approximately 12 noon Eastern time and be used in connection with publication of the next day's Pink Sheets™. The second transmission, consisting of end-of-day information, will occur after the Service closes and be provided to subscribers of CCH/NQB's electronic delivery service the following morning.[6] As to both the Pink Sheets™ and CCH/NQB's electronic delivery service, the priced entries of Market Maker Participants will appear in the form of a stringline. Each Market Maker Participant will be identified by a four character alpha symbol followed by the firm's bid and/or offered prices, and an indicator to designate whether the bid and/or offered price is firm. In instances where a Participant enters only a bid or an offered price, an alpha prefix designating the price as a bid or offer will appear.

(5) The NASD will not assess CCH/NQB a charge for the static transmissions of data from the Service's data base. CCH/NQB, however, will bear all costs associated with the telecommunication line and any support equipment needed to receive or process the NASD's transmissions.

(6) During the twelve-month pilot, CCH/NBQ will continue to collect, process, make available: static quotation information respecting OTC equity securities listed in either the Pink Sheets ™ or the Service through the Pink Sheets ™ publication and the electronic delivery service; historic price, corporate, and issuer information respecting OTC equity securities quoted in the Pink Sheets ™ or the Service through various copyrighted publications;[7] quotation information on OTC debt securities through publication of the Yellow Sheets; and historical price and issuer information on OTC debt securities through other copyrighted publications (*i.e., National Monthly Bond Summary* and *National Bond Summary*). CCH/NQB will also continue to provide its customary research and library services to market professionals and the public. Additionally, CCH/NQB will continue to monitor market makers' compliance with Rule 15c2-11 under the Act and coordinate those functions with the NASD. For example, CCH/NQB will verify that a market maker who seeks to place a new listing in the Service or Pink

[1] This description was also contained in the Commission's notice that solicited public comments on File No. SR-NASD-88-19. *See*, Release No. 34-25949 (July 28, 1988); 53 FR 29096 (August 2, 1988). On August 10, 1988, the NASD submitted a technical amendment (Amendment No. 1) describing the unsolicited indicator that market makers could attach to a bid or offer being displayed on behalf of a retail customer.

[2] If the pilot demonstrates the Service's viability, the NASD will submit another Rule 19b-4 filing to obtain Commission approval of the Service on a permanent basis and the implementation of cost-based subscriber fees.

[3] Since this information will be available through standard NASDAQ terminals, the charges applicable to NASDAQ Level 2/3 service and equipment, including charges for individual queries, will continue to apply.

[4] In this context, "listing" refers to a line of quotations, priced or unpriced, firm or non-firm, one-sided or two-sided, or indications of interest entered by a Participant in a Bulletin Board Security.

[5] The elements of information which will be transmitted to CCH/NQB from the Service's data base include, but need not be limited to: (i) market maker identifications (including trading room telephone numbers if authorized by the individual Market Maker Participants); (ii) security identifications and symbols used by the NASD; (iii) all priced entries as well as indications of interest inserted by Participants; and (iv) any condition codes applicable to individual securities.

[6] Presently, CCH/NQB is the only vendor of static, OTC quotation information that has expressed interest in receiving such a transmission. CCH/NQB currently has agreements with other vendors to electronically disseminate static information contained in the printed Pink Sheets™.

[7] These publications are: (i) *NQB Price Digest*, (ii) *Monthly Price Report*, (iii) *Single Sheet*, (iv) *Weekly Market Maker Report*, (v) *National Monthly Stock Summary*, and (vi) *National Stock Summary*. Exhibit 2 of this filing contains a comment letter (dated November 14, 1988) from John L. Watson, III, President, National Securities Traders Association ("NSTA Letter"). The NSTA Letter attests to the importance of CCH/NQB's historical records and research services respecting OTC securities quoted in the Pink Sheets ™. In particular, the NSTA Letter notes the value of these informational resources to the securities industry, as well as to accountants and tax attorneys who are required to value Pink Sheets ™ securities.

Sheets ™ has filed the information required by Rule 15c2–11(a)(5) with CCH/NQB. If the required information has not been filed respecting a security eligible for the Service, CCH/NQB will notify the NASD. Upon such notification, NASD will request the market maker to produce that information or justify the basis for claiming an exemption.[8] With respect to market maker listings in the Pink Sheets ™ (*i.e.*, excluding listings in the Service), NQB will request the market maker to produce the required information or provide justification for an exemption.

(7) In consideration of (i) CCH/NQB's continued provision of Rule 15c2–11 support services for its subscribers and for Market Maker Participants, (ii) continued maintenance and publication of Pink Sheets ™, Yellow Sheets and the historical data base of price and issuer information and related research services to market professionals and the public, (iii) the potential loss of Pink Sheets ™ listing fees as a result of the Service's introduction, (iv) an agreement not to create a system in competition with the Service for up to three years and not to raise any objections to the Service in connection with the Commission's consideration of this amended rule change, subject to certain time limitations and compliance with the terms of the agreement between CCH/NQB and the NASD, and (v) in settlement of all claims and disputes, real or potential, between CCH/NQB and the NASD, subject to certain time limitations and compliance the terms of the agreement between CCH/NQB and the NASD, an amount derived from the Participant fees proposed in this filing will be paid to CCH/NQB. The proposed fees are identical to those assessed by CCH/NQB for market maker listings in the Pink Sheets ™. The NASD's agreement with CCH/NQB is premised upon the public interest in ensuring the continuation of an industry capability for the collection and dissemination of OTC securities information should the NASD eventually terminate or limit the scope of the Service. Likewise, for the pilot term, the NASD desires that public investors and securities professionals have continued access to CCH-NQB's historical price information and research services respecting issues quoted in the Pink Sheets ™ or in the Service. Finally, at the conclusion of the Service's pilot period, the NASD will rebate to Market Maker Participants any Service revenue remaining after satisfaction of the NASD's obligations to CCH/NQB and recovery of costs incurred in developing and operating the pilot Service.

[8] CCH/NQB will transmit a copy of the required information supplied by a Market Maker Participant to the Commission and the NASD at least two days prior to publication of a new listing in the Service. CCH/NQB will be capable of making Rule 15c2–11 information available to other broker-dealers upon request. Thus, the NASD and CCH/NQB will coordinate their activities to avoid imposing duplicative filing burdens upon Market Maker Participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purposes of this amendatory filing are threefold: (1) To provide a one-year term for pilot operation of the Bulletin Board Service; (2) to provide workable procedures for distributing, on a static basis, selected information collected through the Service during the pilot period; and (3) to obtain authorization for a temporary listing charge to be levied on Market Maker Participants. The operational features of the Service, as detailed in File No. SR–NASD–88–19, are not modified by this amendment.

The instant filing would permit the NASD to offer the Bulletin Board Service to its members for an extended period without undermining CCH/NQB's capacity to serve a much broader base of end users via the Pink Sheets ™. The twelve-month pilot will allow a truly meaningful test of the Service's viability based upon the breadth and frequency of market makers' participation, and the number of securities routinely quoted in the Service. Such factors will be critical to the NASD's determination whether to offer the Service on a permanent basis. Likewise, the proposed pilot will furnish objective data to support calculation of cost-based fees applicable to Market Maker Participants and subscribers of private vendors that opt to distribute real-time information from the Service's data base after the pilot period.

The NASD's provision of static data feeds to CCH/NQB recognizes the historic importance of the Pink Sheets ™ as both a quotation medium and a research tool that is widely used within the securities industry. Although the Pink Sheets ™ include numerous issues that would not be eligible for the Service (*e.g.*, equity securities that are either exchange-listed or included in NASDAQ), the majority of Pink Sheets ™ issues would be immediately eligible for quotation by Market Maker Participants. These Participants could determine simultaneously to relinquish their Pink Sheets ™ listings in favor of the Bulletin Board Service. Such action would jeopardize continuance of the Pink Sheets ™ and related CCH/NQB Services, particularly to non-members and non-participants in the pilot Service. To avoid such consequences, the NASD proposes to furnish the static data feeds previously described and to make certain payments to CCH/NQB derived from the Participant fees contained in this filing. The sum to be paid to CCH/NQB, if any, for continuation of its existing services will be calculated from a formula that reckons a possible reduction in Pink Sheets ™ listing revenues during the Service's pilot period. Separately, during that period, the NASD will reimburse CCH/NQB for the costs of performing the following activities: monitoring market makers' compliance with Rule 15c2–11 with respect to quotations initiated in the Pink Sheets ™ and/or the Service; preparation, maintenance and distribution of CCH/NQB's historical database of price and issuer information to market professionals and the public; and provision of customary library and research services for market professionals and the public. Assuming that the pilot program proceeds successfully, the NASD will develop appropriate access terms (including cost-based fees) for vendors to distribute selected information captured in the Service's data base to subscribers of their on-line services. At that point, broker-dealers and the investing public will have the option of choosing a printed medium that contains static quotation information, or an electronic medium that provides on-line access to market makers' current quotations/indications of interest with respect to Bulletin Board Securities. However, during the Service's pilot term, the Pink Sheets ™ should remain the most comprehensive and widely-available source of market information for thousands of securities traded exclusively OTC.[9]

[9] Similarly, the CCH/NQB's Yellow Sheets publication contains quotations for thousands of

Continued

The final element of this amendment is the NASD's obtaining authorization for the proposed listing charges to be paid by Market Maker Participants. These charges are identical to the fees currently assessed by CCH/NQB for broker-dealers to maintain Pink Sheets ™ listings for individual securities. As noted earlier, a portion of the revenues from Participant fees may be payable to CCH/NQB (assuming a diminution of Pink Sheets ™ listing revenues traceable to the Service's introduction) in consideration for its continuation of the Pink Sheets ™ and other services that provide market information on OTC securities. This approach is appropriate because of the potential for constriction or discontinuance of the NASD's Service during the pilot period. Further, a portion of the revenues received by the NASD will be used to reimburse CCH/NQB for the costs of monitoring market makers compliance with Rule 15c2–11 *vis-a-vis* the Pink Sheets ™ and the Service; preparation, maintenance, and distribution of CCH/NQB's historical data base of price and issuer information to market professionals and the public; and provision of customary library and research services. Both private investors and market professionals rely upon these services for information on securities that are traded exclusively OTC and not on NASDAQ. Finally, the fee schedule proposed for Market Maker Participants will not extend beyond the Service's pilot period. Any excess revenues remaining after satisfaction of the NASD's obligations to CCH/NQB and recovery of costs traceable to the Service's pilot development and operation will be rebated to Participants after the pilot's conclusion. By that time the NASD will have calculated cost-based fees to accompany operation of the Bulletin Board Service on a permanent basis.

CCH/NQB—NASD Agreement

The principal elements of this filing stem from a working agreement recently consummated between CCH/NQB and the NASD. The structure of that agreement encompasses various undertakings that will facilitate: (i) Prompt initiation of the Service's pilot operation by obviating any potential claims or objections that CCH/NQB might assert, subject to certain time limitations and compliance with the agreement's terms; (ii) use of CCH/NQB's historical records, personnel, and expertise relative to continued monitoring of market makers' compliance with Rule 15c2–11(a)(5) under the Act; (iii) continued availability of the Pink Sheets™ for the duration of the Service's pilot, particularly to parties who will not be eligible for on-line access to the Service; (iv) potential enhancement of Pink Sheets™ information delivered to CCH/NQB's subscribers, as a result of the static data feeds received from the NASD; (v) maintenance of CCH/NQB's historical records, library/research services, and other market data publications covering OTC securities; and (vi) achievement of the broadest possible exposure of Market Maker Participants' priced quotations in Bulletin Board Securities.

It should be emphasized that the pilot program is intended to test the viability of the Service to market makers in eligible securities. If the pilot proves successful, it could eventually lead CCH/NQB to restrict or terminate the Pink Sheets™ as a printed quotation medium. For the pilot term, however, the NASD believes that the goals of investor protection and maintenance of fair and orderly OTC markets are best served by ensuring continued production of the Pink Sheets™ (as supplemented by the daily feeds from the Service's data base) and continuance of other publications and services cutomarily provided by CCH/NQB. Market Maker Participants in the Service will also benefit from exposure of their priced quotations in the Pink Sheets™, the most comprehensive and widely available quotation medium that currently exists for OTC securities. The costs associated with that the NASD's proposed charges are identical to CCH/NQB's Pink Sheets™ listing fees. CCH/NQB has committed not to increase these fees during the term of Service's pilot. Hence, a market maker in Bulletin Board Securities that opts to substitute the Service for the Pink Sheets™ will not incur additional costs unless the firm increases the number of securities in which it currently displays interest via the Pink Sheets™.

The CCH/NQB—NASD agreement effectively provides an interim period (the pilot period for the Bulletin Board Service) for CCH/NQB to evaluate alternative business opportunities in the event that the Service renders the Pink Sheets™ obsolete. The agreement does not create any competitive advantage for CCH/NQB *vis-a-vis* other vendors of printed quotation mediums or vendors that disseminate OTC market information electronically. During the Service's pilot, the NASD is prepared to furnish static data feeds to other entities that produce publications comparable to the Pink Sheets™ on substantially the same terms as provided for in the CCH/NQB—NASD agreement. However, until the Service demonstrates its viability, the NASD will not be in a position to formulate cost-based fees for vendors wishing to offer on-line access to the Service's data base during the trading day. The NASD will address those matters with interested vendors during the Service's pilot period.

Additionally, in consideration of the payments prescribed under the terms of the CCH/NQB—NASD agreement, CCH/NQB will refrain from developing an interactive service comparable to the Bulletin Board Service for up to three years from the date of the pilot's commencement. This element reflects CCH/NQB's decision to consider business options that may be more closely related to their traditional data compilation and publication activities. As noted above, the CCH/NQB—NASD agreement contemplates that CCH/NQB will support and not raise objections to the NASD's provision of the Service under the amended terms of the pilot program and coordinate with the NASD the tasks related to monitoring market makers' compliance with Exchange Act Rule 15c2–11. The covenants regarding non-competition and non-objection to operation of the Service in accord with this Amendment are subject to certain time limitations and the parties' strict adherence to the terms of the agreement.

Statutory Bases

In submitting File No. SR–NASD–88–19, the NASD cited sections 11A(a)(1), 15A(b)(6) and (11) of the Act as providing the statutory bases for the Bulletin Board Service. Further, the NASD explained how the Service's design and operational features would further the statutory intent of each provision. Because Amendment No. 2 to File No. SR–NASD–88–19 does not modify the system design or operational features of the Service, the NASD hereby reiterates its earlier statement on the statutory bases that could sustain the Commission's approval of the Service.

Amendment No. 2 to File No. SR–NASD–88–19 involves the imposition of a fee upon Market Maker Participants. Therefore, it is necessary to examine that fee in relation to the requirements of section 15A(b)(5) of the Act. That provision requires the equitable allocation of reasonable charges among members for the use of any facility or system that the NASD operates. The

---

debt securities traded over-the-counter. Those securities would not be eligible for quotation through the Service during the Pilot Period. The NASD reserves the right to do so after Pilot Period through it currently has no intent to do so.

proposed fee structure tracks that of CCH/NQB for market maker listings in the Pink Sheets™ publication. The NASD believes this to be a reasonable standard for establishing an interim fee applicable to the Service's pilot phase. Such a standard is appropriate because of the NASD's present inability to project the user population over which the Service's costs could be spread, the extent to which OTC market makers will elect to become Participants, or the additional subscriber population that may be interested in receiving Bulletin Board information after the pilot has terminated. Absent these data, it is logical to reference the fees charged for market maker listings in the most comparable quotation medium for OTC securities. Essentially, Market Maker Participants will be asked to pay no more and no less than they currently pay to display priced entries in OTC securities via a widely-recognized quotation medium. Thus, OTC market makers choosing the Service in lieu of the Pink Sheets™ will not incur additional costs unless they increase their respective market making commitments in eligible securities. Since participation in the Service in voluntary, individual market makers will assess whether the Service or one of the printed quotation mediums (including the Pink Sheets™) is best suited to their needs. Based on the foregoing, the NASD believes that the interim fees proposed for the Service are consistent with section 15A(b)(5) of the Act.

Clearly, the amended terms for the Service will foster continuance of the Pink Sheets™ during the pilot term. This result is justified by the experimental character of the Service, the exclusion of listed and NASDAQ securities from the potential universe of Bulletin Board Securities, and the limitation of real-time access to the Service's data base to NASD firms with NASDAQ equipment. As a quotation medium, the Pink Sheets™ currently provide the most inclusive listing of securities traded OTC along with the identities of market makers in those securities. Consequently, the Pink Sheets™ constitute a valuable resource tool that is used widely by the securities professionals and public investors. Until the Service has proven its viability, the NASD believes that the Pink Sheets™ should be preserved as quotation medium for OTC securities.[10]

[10] Similarly, the public interest compels maintenance of CCH/NQB's unique combination of publications and research services for OTC securities generally.

Accordingly, the NASD submits that Commission approval of the amended Bulletin Board Service may be grounded upon the Congressional findings in Subsections (B) and (C) of Section 11A(a)(1) of the Act. Subsection (B) states that new data processing and communications techniques create the opportunities for more efficient and effective market operations. Additionally, under Subsection (C), the Congress found that the goals of investor protection and the maintenance of fair and orderly markets are advanced by broadening the dissemination of quotations for all classes of securities.

Lastly, the NASD relies upon section 15(A)(b)(11) of the Act in support of this amendatory filing. That provision empowers the NASD to regulate the form and content of quotations distributed on OTC securities. More specifically, such regulations must be structured to produce fair and informative quotations, to prevent misleading quotations, and to promote orderly procedures for collecting, distribution and publishing quotations. The NASD believes that Commission aproval of File No. SR–NASD–88–19, as hereby amended, would be consistent with the public policy goals clearly evident in the language of section 15A(b)(11). Continued availability of the Pink Sheets™ (and related CCH/NQB information services) coupled with the coordination of CCH/NQB and NASD efforts respecting market makers' compliance with Rule 15c2–11 will ensure the integrity of quotes originated by Market Maker Participants in the Service. The regulatory experience gained from the NASD's operation of the pilot Service will form a sound foundation for future system enhancements should the Service become permanent.

In sum, the NASD's arrangement with CCH/NQB provides an operational "safety net" to ensure the availability of a recognized quotation medium for Bulletin Board Securities and certain ancillary services during the Service's pilot phase. This result is consistent with the concepts of investor protection and maintenance of fair and orderly OTC markets that underlie the NASD's status as a self-regulatory organization.

Accordingly, the NASD believes that ample statutory bases exist for the Commission's approval of File No. SR–NASD–88–19 as hereby amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

As noted earlier, the design and operational features of the Bulletin Board Service are not being modified by Amendment No. 2 to File No. SR–NASD–88–19. Accordingly, the NASD hereby reiterates its previous analysis of competitive questions under Item 4 of its original filing on the Service.

The NASD posits that the amended terms for the pilot operation of the Bulletin Board Service will not constitute an undue burden upon Market Maker Participants. Several factors support this proposition. First, the NASDAQ terminal population, unlike independent vendors' systems for Level 1 information, will not provide broad-based dissemination of Bulletin Board Information to registered representatives and retail customers. Consequently, continuance of CCH/NQB's Pink Sheets™ medium is a logical and necessary adjunct to the Service. Second, market maker participation in the Service is entirely voluntary. A Participant may expand or contract such participation based upon business considerations. Third, to the extent that a firm already maintains Pink Sheets™ listings for Bulletin Board Securities and substitutes the Service, it will incur no added charge for displaying priced quotations in both mediums. Fourth, by the conclusion of the pilot program, the NASD will have formulated cost-based charges for members' access to the Service through NASDAQ equipment. During the Service's pilot term, the NASD will work with private vendors who may be interested in supplying components of the Service's data base to subscribers of their real-time data services. This cooperative undertaking will encompass definition of the information to be furnished and the corresponding access terms and cost-based charges. These matters will be addressed in a separate Rule 19b-4 filing to gain permanent status for the Service.

Promoting continuance of the Pink Sheets™ as a quotation medium might be perceived as an action that disadvantages other vendors that publish static quotation information on OTC securities. During the pilot term, the NASD is prepared to provide static transmissions to other interested vendors that produce publications comparable to CCH/NQB's Pink Sheets™ on substantially the same terms as provided for in the CCH/NQB—NASD agreement. To date, no other vendor has expressed an interest in receiving static transmissions of data from the Service's data base.

Finally, the existence of the CCH/NQB—NASD agreement does not pose a competitive burden to vendors that customarily offer on-line access to

current OTC market information during business hours. As stated earlier, only NASD members with NASDAQ equipment will have real-time access to the Service's data base during the pilot term. However, the NASD has committed to work with interested vendors during that period to develop appropriate access terms and cost-based fees. Those access terms/fees will be submitted for Commission approval in conjunction with another Rule 19b–4 filing to gain permanent status for the Service. Therefore, assuming that the pilot is successful, all vendors of screen-based services will be on an equal footing with respect to marketing components of the Service's data base. The existence of the CCH/NQB—NASD agreement does not alter the NASD's stated approach in File No. SR–NASD–88–19 toward distribution of Bulletin Board data to the vendor community.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received on this Amendment No. 2 to File No. SR–NASD–88–18.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should filed six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–88–19 (Amendment No. 2) and should be submitted by March 16, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: February 14, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–4129 Filed 2–22–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 35–24822]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 16, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 13, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central Power and Light Company (70–7563)

Central Power and Light Company ("CP&L"), P.O. Box 2121, Corpus Christi, Texas 78403 a subsidiary of Central and South West Corporation, a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

CP&L requests authority to lease its unit trains and railcars to nonassociated third parties from time to time on a short-term basis when not in use by CP&L. The unit trains and railcars are used by CP&L to transport coal to its Coleto Creek electric generating plant located in Fannin, Texas.

Lease terms will only cover periods that CP&L does not need the trains and railcars for its operations. Such periods will generally range from as short as the time it takes to make one trip from the locations of CP&L's coal sources to its generating plant to as long as two months; however, if CP&L were to shut down its generating plant, either for scheduled maintenance or for some other unforeseen reason, such periods could extend up to four months. Any leases will provide for lease rates at or near the market rates at the time of entry into such leases.

Because of the circumstances under which opportunities to enter into the proposed leases arise, CP&L cannot anticipate when its trains and railcars will be available for leasing in sufficient time to seek specific authority from the Commission. Accordingly, CP&L requests authority to enter into leases under the circumstances described above, to the extent that the use of the cars for leasing purposes will not exceed 50 percent of the total use of such cars.

Energy Initiatives, Incorporated (70–7605)

Energy Initiatives, Incorporated ("EII") One Gatehall Drive, 3rd Floor, Parsippany, New Jersey 07054, a wholly owned indirect subsidiary of General Public Utilities Corporation, a registered holding company, has filed an application pursuant to Section 6(b) of the Act.

EII proposes to issue and renew, from time to time, unsecured promissory notes ("Notes") to commercial banks pursuant to informal lines of credit through December 31, 1990 in an aggregate principal amount of up to $5 million outstanding at any one time.

The Notes will: (i) Mature not more than 9 months after their date of issuance; (ii) bear interest at a rate (after giving effect to any fees or compensating balance requirements) not exceeding 125 percent of the lending bank's prime rate for commercial borrowing at the date of issuance of such Note; (iii) be prepayable only to the

extent provided therein; and (iv) not be issued as part of a public offering.

Central and South West Services, Inc., et al. (70-7615)

Central and South West Services, Inc. ("CSWS"), 2121 San Jacinto Street, Suite 2400, Dallas, Texas 75201 a subsidiary of Central and South West Corporation ("CSW"), a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

CSWS has signed a letter of intent to purchase an office building, to replace existing rented space, to meet all of its office space needs for the foreseeable future, at a purchase price not to exceed $8,350,000 from Sedco Forex ("Sedco"), a division of Schlumburger Technology Corporation. In this regard, CSWS requests authority to assume a 9 percent mortgage note on the property which matures January 1, 2008, but is callable at the option of the holder in 4 years. The current balance on the mortgage and related note is $5,880,000. The remaining portion of the purchase price of $2,470,000 will be paid in cash by CSWS to Sedco out of advances up to that amount from the CSW money pool, pursuant to authority previously granted to CSWS, by order dated April 2, 1987 (HCAR No. 24363).

To the extent that the assumption of the obligations on the mortgage note may be considered the issuance of a note, CSWS requests an exception from the competitive bidding requirements contained in Rule 50, because the nature of the transaction makes compliance with the rule inappropriate and unnecessary for the protection of investors or consumers or for the protection of the public interest.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-4205 Filed 2-22-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas Nos. 6720 & 6721]

Florida (and Contiguous Counties in the State of Alabama); Declaration of Disaster Loan Area

Escambia and Santa Rosa Counties, and the contiguous county of Okaloosa, in the State of Florida, and Baldwin and Escambia Counties in the State of Alabama, constitute an Economic Injury Disaster Loan Area due to economic losses resulting from the closing of the Pensacola Bay Bridge, which was severely damaged on January 14, 1989. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on November 3, 1989 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. Economic Injury Declaration #672000 is assigned for the State of Florida and #672100 for the State of Alabama.

(Catalog of Federal Domestic Assistance Program No. 59002)

Date: February 3, 1989.

James Abnor,

Administrator.

[FR Doc. 89-4227 Filed 2-22-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas Nos. 2331, 2332 & 2333]

Utah (and Contiguous Counties in the States of Arizona & Nevada); Declaration of Disaster Loan Area

Washington County, and the contiguous counties of Iron and Kane, in the State of Utah; Mohave County, in the State of Arizona; and Lincoln County in the State of Nevada, constitute a disaster area as a result of damages from a flash flood caused by the failure of the Quail Creek Reservoir Dike, which occurred on January 1, 1989. Applications for loans for physical damage may be filed until the close of business on April 6, 1989, and for economic injury until the close of business on November 3, 1989, at the address listed below: Disaster Area 4 Office, Small Business Administration, P. O. Box 13795, Sacramento, CA 95853-4795 or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The numbers assigned to this disaster for physical damage are 233106 for the State of Utah; 233206 for the State of Arizona; and 233306 for the State of Nevada; and for economic injury the numbers are 671600 for the State of Utah; 671700 for the State of Arizona; and 671800 for the State of Nevada.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: February 3, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-4228 Filed 2-22-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0514]

Citicorp Investments Inc.; Issuance of a Small Business Investment Company License

On February 29, 1988, a notice was published in the Federal Register (53 FR 6052) stating that an application has been filed by Citicorp Investments Inc., 399 Park Avenue, New York, New York 10043, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investments companies (13 CFR 107.102 (1987)) for a license to operate as a small business investment company.

Interested parties were given until close of business March 31, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0514 on February 2, 1989, to Citicorp Investments Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 10, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-4229 Filed 2-22-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5520]

Esquire Capital Corp.; Issuance of a Small Business Investment Company License

On July 27, 1988, a notice was published in the Federal Register (53 FR 28309) stating that an application has been filed by Esquire Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business August 26, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-5520 on February 14, 1989, to Esquire Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 16, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-4230 Filed 2-22-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0379]

First Interstate Equity Corp.; Issuance of a Small Business Investment Company License

On November 18, 1988, a notice was published in the **Federal Register** (53 FR 223) stating that an application had been filed by First Interstate Equity Corporation, 100 West Washington Street, Phoenix, Arizona 85003, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license to operate as a small business investment company.

Interested parties were given until the close of business December 18, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-0379 on February 1, 1989, to First Interstate Equity Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 14, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-4231 Filed 2-22-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0524]

First Wall Street SBIC, L. P.; Issuance of a Small Business Investment Company License

On December 8, 1988, a notice was published in the **Federal Register** (53 FR 49633) stating that an application had been filed by First Wall Street SBIC, L. P. with the Small Business Administration (SBA) pursuant to Section 107.102 (1988)) for a license to operate as a small business investment company.

Interested parties were given until the close of business January 7, 1989, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0524 on February 1, 1989, to First Wall Street SBIC, L. P., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry

Deputy Associate Administrator for Investment.

Dated: February 14, 1989.

[FR Doc. 89-4232 Filed 2-22-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0526]

Paribas Principal, Inc.; Application To Operate as a Small Business Investment Company Licensee

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Paribas Principals, Incorporated, 787 Seventh Avenue, 33rd Floor, New York, New York 10019, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name and Address	Title
Bernard Allorent, 4 East 70th St., New York, NY 10021.	Chairman, Director.
Joseph E. Francht, Jr., 28 Windsor Rd., Summit, NJ 07901.	Vice Chairman, Secretary and Director.
Miles S. Alexander, Tower Apartment, 330 E. 49th St., New York, NY 10017.	President, Manager and Director.
Jeffrey J. Youle, 575 West Ave., Darien, CT 06620.	Assistant Secretary and Director.
Laurent H. Adamowicz, 1441 Third Ave., New York, NY 10028.	Director.
Robert E. Howard, 247 York St., Jersey City, NJ 07302.	Director.
Banque Paribas, 787 Seventh Ave., New York, NY 10019.	Sole Shareholder.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: February 14, 1989.

[FR Doc. 89-4233 Filed 2-22-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-009]

Towing Safety Advisory Committee; Correction

AGENCY: Coast Guard, DOT.

ACTION: Request for Applications; Correction.

SUMMARY: The Coast Guard is publishing this notice correcting a document that requested applications for appointment to the Towing Safety Advisory Committee (TSAC) published in the **Federal Register** on February 13, 1989, (54 FR 6634) (FR Doc 89-3339) (paragraph 2 under the heading *Summary*). The correct vacancies are as follows: Three (3) members from the barge and towing industry, reflecting a geographical balance; two (2) members from port districts, authorities or terminal operators; and two (2) members from the general public.

DATES: Requests for applications should be received no later than April 10, 1989.

FOR FURTHER INFORMATION CONTACT: Commander R.J. Asaro, Executive Director, Towing Safety Advisory Committee (G-MP-3), Room 2420, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-0449.

Dated: February 17, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-4193 Filed 2-22-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[File No. AC 21.17-2]

Proposed Advisory Circular: Type Certification—Fixed-Wing Gliders (Sailplanes), Including Self-Launching (Powered) Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed advisory circular; Request for comments; Extension of comment period.

SUMMARY: A notice of availability and request for comments on proposed Advisory Circular (AC) 21.17-2, Type Certification—Fixed-Wing Gliders (Sailplanes) Including Self-Launching (Powered) Gliders, was published in the **Federal Register** on January 9, 1989 (54 FR 725) with a 30-day comment period. The comment period closed on February 8, 1989. Due to requests from potentially affected aircraft manufacturers and national homebuilders' organizations, the comment period is being extended for an additional 45 days. Proposed AC 21.17-2 will replace AC 21.23-1, Type Certification—Fixed-Wing Gliders (Sailplanes). AC 21.23-1, dated January 12, 1981, will be cancelled. AC 21.17-2 describes three acceptable criteria, but not the only criteria, for the type certification of fixed-wing gliders (sailplanes) including self-launching (powered) gliders, that may be used by an applicant in showing compliance with new § 21.17(b) of the Federal Aviation Regulations (FAR 21).

DAIE: Comments must be received on or before April 10, 1989.

ADDRESS: Comments on proposed AC 21.17-2 may be mailed or delivered to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Policy and Procedures Branch, AIR-110, 800 Independence Avenue SW., Room 335, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle C. Davis, Aerospace Engineer, Policy and Procedures Branch, AIR-110, Telephone (202) 267-9583.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the AC number and be submitted to the address specified above. All communications received on or before the closing date for comments will be considered before issuing Advisory Circular 21.17-2.

Background

Federal Aviation Regulations (FAR) Part 21 was amended effective April 13, 1987, to provide procedures for the type certification and airworthiness certification of special classes of aircraft. Special classes of aircraft include gliders (including self-launching gliders), airships, and other kinds of aircraft that would be eligible for a standard airworthiness certificate but for which no airworthiness standards have as yet been established as a separate part of Subchapter C of the CFR. Airworthiness standards for these special classes of aircraft are designated in new FAR 21.17(b). Proposed AC 21.17-2 contains a comprehensive list of acceptable criteria, but not the only means, for the type certification of gliders. This AC also provides procedures for other persons to develop and obtain FAA approval for their own design criteria. In addition, procedures and additional criteria necessary to obtain a U.S. type certificate are provided.

Section 21.23 of FAR Part 21 was removed and the glider requirements incorporated into § 21.17(b). Therefore, the essence of AC 21.23-1 is included in proposed AC 21.17-2.

Related FAR

Section 21.5—Airplane or Rotorcraft Flight Manual.

Section 21.17—Designation of applicable regulations.

Part 23—Airworthiness Standards: Normal, Utility, and Acrobatic Category Airplanes.

Part 33—Airworthiness Standards: Aircraft Engines.

Part 35—Airworthiness Standards: Propellers.

Part 45, Subpart C—Nationality and Registration Marks.

Section 91.31—Civil aircraft flight manual, marking and placard requirements.

Section 91.33—Powered civil aircraft with standard category U.S. airworthiness certificates; instrument and equipment requirements.

How to Obtain Copies

A copy of proposed AC 21.17-2, Type Certification—Fixed-Wing Gliders (Sailplanes) Including Self-Launching (Powered) Gliders, may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on February 14, 1989.

John K. NcGrath,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89-4102 Filed 2-22-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 165—Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the second meeting of RTCA Special Committee 165 on Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services to be held March 20-22, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005, commencing at 1:00 p.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the first meeting's minutes, RTCA Paper No. 24-89/SC165-8; (3) technical presentations; (4) working group reports on Operation and

Implementation Working Group report; Equipment Standards Working Group report; and Service Performance Criteria Working Group report; (5) review of overall draft progress; (6) working group sessions; (7) assignment of tasks; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 15, 1989.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 89-4103 Filed 2-22-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Sussex County, DE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Sussex County, Delaware.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Wheeler, Realty/Environmental Specialist, Federal Highway Administration, Delaware Division, 300 S. New Street, Room 2101, Dover, Delaware 19901. Telephone: (302) 734-5323. Mr. Joseph T. Wutka, Jr., Project Manager, Delaware Department of Transportation, P.O. Box 778, Dover, Delaware 19903. Telephone (302) 736-4642.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Delaware Department of Transportation (DELDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to consider the construction of approximately 30 miles of highway improvements in Sussex County, Delaware. The proposed improvements will serve to relieve Delaware Routes 404, 18 and 9 main east-west route thru northern Sussex County, Delaware. The proposed facility would extend from the Maryland Line west of Bridgeville to Delaware Route 1 near Lewes, Delaware.

Various studies for alternate routes to east-west traffic in northern Sussex County have been conducted since the mid to late 60's. These studies considered numerous alternatives; but, for various reasons, were never implemented. As part of this study, these previous studies will be reviewed and an updated look at possible alignments will be pursued. Alternatives to be considered will include (1) taking no action (no build), (2) improvements on existing alignment, (3) improvements on new alignment, and (4) a combination of (2) and (3).

A program of public involvement and coordination with Federal, State and local agencies will be initiated. It is envisioned that involvement with the public and other agencies will continue throughout the development of the project. An initial scoping meeting will be held on March 20 in the Headquarters Office of DELDOT on U.S. Route 113 at 10:00 a.m. in the North Conference Room. Additional information will be forwarded to interested participants prior to the meeting.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be addressed to the FHWA or DELDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The State Intergovernmental review contacts established under Executive Order 12372 (former A-95 processes) regarding State and local clearinghouse review of Federal and Federally assisted programs and activities apply to this program.)

Paul J. Lang,

Acting Division Administrator, Dover, Delaware.

[FR Doc. 89-4225 Filed 2-22-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. EX89-2; Notice 1]

Conceptor Industries, Inc.; Petition for Temporary Exemption From Seven Federal Motor Vehicle Safety Standards

Conceptor Industries, Inc., of Richmond Hill, Ontario, Canada, has petitioned for a temporary exemption from seven Federal Motor Vehicle Safety Standards on the basis that it would facilitate the development and field evaluation of a low emission motor vehicle.

Notice of receipt of the petition is published in accordance with regulations of the National Highway Traffic Safety Administration on this subject (49 CFR Part 555) and does not represent any agency decision or other exercise of judgment concerning the merits of this petition.

Conceptor has not heretofore manufactured motor vehicles. In conjunction with the Electric Vehicle Development Corporation and the Electric Power Research Institute, and several U.S. electric utility companies, Conceptor is modifying "G-Van's produced by General Motors Corporation. These modifications include substitution of an electric propulsion system for the internal combustion propulsion system with which the vehicle is originally manufactured. Specific components that are removed include the engine, exhaust system, collant system, transmission, and drive shaft. They are replaced with an electric traction motor, 16 monoblock batteries in a tray, an electrical controller, and a smaller transmission and drive shaft. These modifications result in a heavier vehicle with an all new frontal structure, the addition of the battery tray to the underlying structure, and the relocation of the power train to the rear. The net result of the modifications is to change the crash characteristics of the original G-Van, but the modifications also affect compliance with some Federal safety standards which do not contain a barrier impact test procedure. Petitioner is not aware that its modifications will actually result in noncompliances, but it seeks a 2-year exemption from several standards that may be affected. In the meantime it will conduct such testing and make such modifications as may be required to ensure that its vehicle complies at the end of the exemption period. It will not produce more than 2500 vehicles in any 12-month period in which the exemption is in effect, as its current plans are to sell no more than 200 exempted vehicles overall.

The standards from which Conceptor seeks exemption, and its reasons for so doing, are:

1. Standard No. 103, *Windshield Defrosting and Defogging Systems.* The heater unit is a new diesel power one with different power output characteristics, affecting time to obtain operating temperature and the total power output rating. Petitioner raises the possibility that this change may actually improve performance of the heater when tested according to the Standard.

2. Standard No. 105, *Hydraulic Brake Systems.* The increased curb weight, the change in center-of-mass location, new weight distribution, new mode of power for the brake-hydraulic system and the introduction of regenerative braking will require the G-Van's braking system to be recalibrated for the new vehicle configuration. Petitioner requests exemption from the stopping distance requirements of the third effectiveness test (paragraph S5.1.1.3), the partial failure requirements (S5.1.2), and the inoperative brake power assist unit or brake power unit requirements (S5.1.3).

3. Standard No. 124, *Accelerator Control Systems.* The electric G-Van will incorporate an all-new accelerator mechanism. Testing is at present needed to determine its compliance with the standard.

4. Standard No. 208, *Accelerator Restraint Systems.* In the absence of any information to the contrary, NHTSA assumes that the restraint systems installed by General Motors will remain in place. However, their continued compliance with the standard has not been demonstrated in the absence of barrier impact testing, for which the petitioner requests exemption.

5. Standard No. 212, *Windshield Mounting.*

6. Standard No. 219, *Windshield Zone Intrusion.*

Petitioner wishes to demonstrate compliance with these standards also through barrier impact testing, and exemption is therefore requested.

7. Standard No. 301, *Fuel System Integrity.* The Electric G-Van incorporates a new fuel tank used in the diesel powered heater unit. Compliance will be demonstrated through impact testing, which has not been conducted, and an exemption is therefore requested.

Petitioner submits that during the time of the temporary exemption the technical and economic feasibility of the Electric G-Van will be evaluated. It argues that an exemption will be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act for the following reasons:

1. The evaluation period afforded by the exemption could lead to the greater commercialization of low-emission motor vehicles, and concommitant improvement in the air quality of urban areas.

2. Electric vehicles will help reduce dependency upon foreign oil.

3. Electric vehicles may help to reduce the incidence of vehicle fires.

Interested persons are invited to comment on the petition by Conceptor Industries, Inc., described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date below will be considered. The petition and supporting materials and all comments received will be available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed and will be considered to the extent practicable. Notice of final action will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 27, 1989.

(15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: February 16, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-4148 Filed 2-22-89; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA). Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA in association with the International Regulations Committee of the Hazardous Materials Advisory Council will conduct a public meeting to discuss the issues that will be presented at the next Working Group meeting of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP).

DATE: March 29, 1989, 9:30 a.m.

ADDRESS: Room 4234. Nassif Building, 400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Barlow, Acting International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: This meeting will be used to review the proposed changes to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air that will be presented to the next meeting of the DGP's Working Group which is scheduled to meet in Madrid, Spain from 17 to 28 April, 1989.

Issued in Washington, DC on February 17, 1989.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-4149 Filed 2-22-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510-0055.
Form Number: SF 5805.
Type of Review: Extension.
Title: Request for Funds.
Description: Information is required to fund respondents who are recipients of Federal grants and program benefits. The respondents consist of State and local government agencies, municipalities, universities, and health organizations. The information is used solely to direct requested funds to the respondent's account at its financial institution.
Respondents: State and local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions.
Estimated Number of Respondents: 6,000.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Rita Franklin, (301) 436-5300; Programs Section, Financial Management Service, Room 100, 3700

East-West Highway, Hyattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880; Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-4191 Filed 2-22-89; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Proposed Revision of Forms 990 and 990-PF for 1989 and Proposed New Form 990EZ and Solicitation of Public Comments

The Internal Revenue Service is considering a major change to Form 990, Return of Organization Exempt From Income Tax, and to Form 990-PF, Return of Private Foundation, to require more information about income-producing activities conducted by filers of those returns. The change is embodied in new Part VII-A, Analysis of Income-Producing Activities, and in new Part VII-B, Relationship of Activities to the Accomplishment of Exempt Purposes. A draft of these new parts follows this notice.

The Oversight Subcommittee of the House Ways and Means Committee has expressed a need for this information in correspondence with the Service and in the course of its 1988 hearings dealing with the unrelated business income tax provisions of the Internal Revenue Code. Such information would serve the two-fold purpose of providing Congress with data needed to assess the impact of each current (or future) Code provision which shields certain types of income from the unrelated business income tax, as well as improving taxpayer compliance with, and the Service's administration of, the current unrelated business income provisions.

The Service will devise a system of codes for each Form 990 or 990-PF filer to use in Part VII-A to indicate why a particular type of income is not subject to tax (because it is not regularly carried on, because it is performed with substantially all volunteer labor, or because it is excluded by section 512(b)(1), for example). A second system of unrelated business income codes will be used to identify specific types of income that the filing organization acknowledges as being subject to tax. The codes contained in the instructions to Form 990-T, Exempt Organization Business Income Tax Return, may be expanded and used for this purpose or a new coding system may be developed.

Primarily to offset the aggregate reporting burden increase from adding new parts VII-A and VII-B, the Internal Revenue Service intends to adopt a shortened (two-page) version of Form 990 for 1989 and later years. This form, tentatively numbered Form 990EZ, is proposed to be filed by organizations with gross receipts of less than $100,000 and end of year total assets below $500,000. Form 990EZ filers will *not* have to provide the detailed information about income-producing activities required by new Parts VII-A and VII-B of Forms 990 and 990-PF (discussed above). A draft of the proposed short form follows this notice.

Schedule A (Form 990) for 1988 contains a new Part VII, Information Regarding Transfers, Transactions, and Relationships With Other Organizations, that must be completed by all section 501(c)(3) organizations and section 4947(a)(1) trusts. (The 1988 Form 990-PF contains an identical schedule.) Part VII was added to provide the information required by section 6033(b)(9) of the Code, effective for return years beginning after December 31, 1987. The 1988 instructions for new Part VII solicit public comments on the instructions for the new schedule as well as comments regarding the schedule itself. The need for organizations to maintain records necessary to complete this new part was announced by the Service in Notice 835, Major New Tax law Changes Affecting Exempt Organizations (January 1988). A copy of Notice 835 was mailed to every section 501(c)(3) organization with a Form 990 or Form 990-PF filing requirement.

The Service invites interested members of the public to submit comments on all aspects of proposed new Parts VII-A and VII-B of Form 990 and Form 990-PF for 1989, proposed Form 990EZ for 1989, and Part VII (and instructions) of Schedule A (Form 990) for 1988. Written comments should be submitted by March 31, 1989 to: Assistant Commissioner (Employee Plans and Exempt Organizations), Internal Revenue Service, Attn: EO 990, Room 3406, 1111 Constitution Avenue NW., Washington, DC 20224.

Most of the states with annual reporting requirements for charities and social welfare organizations accept Form 990 as the basic report form for state reporting purposes. These states, therefore, have a direct interest in the design and content of proposed Form 990EZ if that form is to be used as the reporting medium to the states by smaller organizations. The Service has had discussions with state representatives regarding Form 990EZ and will meet with them for further discussions and to decide on a final version of the form after the public's comments have been considered.

A copy of the final versions of Form 990EZ and Parts VII-A and VII-B of Form 990 and Form 990-PF for 1989 will be published in the Internal Revenue Bulletin as soon as possible to alert affected organizations and return preparers.

For additional information contact: Mr. Robert W. Gardiner of the Employee Plans and Exempt Organizations Operations Division, Internal Revenue Service, at (202) 566-9299 (not a toll-free call).

Date: February 17, 1989.

R. E. Withers,

Deputy Assistant Commissioner (Employee Plans and Exempt Organizations).

BILLING CODE 4830-01-M

Part VII Information Regarding Transfers, Transactions, and Relationships With Other Organizations
See instructions on reverse side.

		Yes	No
51	Did the organization directly or indirectly engage in any of the following with any other organization described in section 501(c) of the Code (other than section 501(c)(3) organizations) or in section 527, relating to political organizations?		
a	Transfers of:		
	(i) Cash		
	(ii) Other assets		
b	Transactions:		
	(i) Sales of assets		
	(ii) Purchases of assets		
	(iii) Rental of facilities or equipment		
	(iv) Reimbursement arrangements		
	(v) Loans or loan guarantees		
	(vi) Performance of services or membership or fundraising solicitations		
c	Sharing of facilities, equipment, mailing lists or other assets, or paid employees		

d If "Yes" to any of the above, complete the following schedule. The "Amount involved" column below should always indicate the value of the goods, other assets, or services given. In addition, if the organization received less than fair market value in any transaction or sharing arrangement, the column should include the value of the goods, other assets, or services received.

Line no.	Amount involved	Name of noncharitable organization	Description of transfers, transactions, and sharing arrangements

52a Is the organization directly or indirectly affiliated with, or related to, one or more tax-exempt organizations described in section 501(c) of the Code (other than section 501(c)(3) organizations) or in section 527? ☐ Yes ☐ No

b If "Yes," complete the following schedule.

Name of organization	Type of organization	Description of relationship

Instructions for Part VII. —Information Regarding Transfers, Transactions, and Relationships With Other Organizations

Note: *Part VII was added to provide for the reporting of the information specified in section 6033(b)(9) of the Code, as amended by section 10703(a) of Public Law 100-203, effective for return years beginning after December 31, 1987.*

The reporting instructions given below should be used to complete Part VII for 1988. IRS may issue further guidance in future years. Any comments or suggestions regarding the instructions or the reporting required in Part VII should be addressed to:
Assistant Commissioner
(Employee Plans and Exempt Organizations),
Internal Revenue Service,
Room 3408,
1111 Constitution Avenue, N.W.,
Washington, DC 20224.

In General

Part VII is used to report all direct and indirect transactions (line 51) and relationships (line 52) with any other section 501(c) organization (not including section 501(c)(3) organizations) and with any political organization described in section 527. A relationship that existed with another organization at any time during the year must be reported on line 52 even if the relationship was terminated before the end of the year. A transaction generally must be reported on line 51 even if the transaction itself constitutes the only connection with the other organization involved. However, certain transactions with unrelated organizations (discussed below) need not be reported. Thus, for example, a one-time only transaction with an otherwise unrelated section 501(c)(4) organization would not need to be entered on line 52 but the transaction may be reportable on line 51.

Line 51.—Reporting of certain transactions and transfers.— Except for those transactions and transfers specifically described below, report on line 51 all direct and indirect transactions and transfers between the reporting organization and any section 527 organization or any section 501(c) organization that is not described in section 501(c)(3). The types of transactions and transfers that need not be reported are: (1) contributions or grants received by the reporting organization, and (2) certain transactions with unrelated organizations (see the next paragraph). **The effect of this reporting requirement is that all direct and indirect transactions and transfers between the reporting organization and its *related or affiliated* organizations must be reported on line 51, except for contributions or grants received by the reporting organization.**

For purposes of line 51, an "unrelated organization" is one which: (1) shares no element of common control with the reporting organization, *and* (2) does not have a historic and continuing relationship with the reporting organization. For guidance in determining whether an organization shares common control or has a historic and continuing relationship with another organization, see the instructions for line 52. A transaction between the reporting organization and an *unrelated* organization need not be reported on line 51 if the transaction is specifically described in (1) or (2) below:

(1) Transactions with any one unrelated organization that total $500 or less during the year do not have to be reported on line 51 if there is adequate consideration. There is adequate consideration where the value of the goods, other assets, or services furnished by the reporting organization is not more than the value of the goods, other assets, or services received from the unrelated organization.

(2) Even where the transactions with an unrelated organization total more than $500, certain transactions need not be reported. If the transactions described in (a) or (b) below do not total more than one percent of the reporting organization's gross receipts, then no reporting is necessary for:

(a) payments for subscriptions, conferences, or seminars issued or conducted by the unrelated organization, so long as the amounts charged are not more than those charged the general public; or

(b) transactions that involve the provision of goods, other assets, or services by the reporting organization, but only where such provision is functionally related (within the meaning of section 4942(j)(4) and the applicable regulations) to the accomplishment of the reporting organization's exempt purposes *and* where the goods, other assets, or services are actually made available to and utilized by the general public on at least as favorable a basis as they are made available to and utilized by the unrelated organization.

None of the line 51 reporting exceptions applies to any contribution, gift, grant, or other transfer of assets or services by the reporting organization for less than fair market value.

Line 52.—Reporting of certain relationships.—For purposes of line 52, a section 501(c)(3) organization is considered to be affiliated with or related to another non-section 501(c)(3) organization if they share some element of common control OR if a historic and continuing relationship exists between the two organizations. An element of common control is present when one or more of the officers, directors, or trustees of one organization are elected or appointed by officers, directors, trustees, or members of the other. Similarly, an element of common control is present when more than 25 percent of the officers, directors, or trustees of one organization serve as officers, directors, or trustees of the other organization.

A historic and continuing relationship exists when two organizations participate in a joint effort or work in concert toward the attainment of one or more common purposes on a continuous or recurring basis rather than on the basis of one or several isolated transactions or activities. Such a relationship also exists when two organizations share facilities, equipment, or paid personnel during the year, regardless of the length of time the arrangement is in effect.

When the control factor or the historic and continuing relationship factor (or both) is present at any time during the year, the relationship must be reported on line 52.

Form 990 (1989) Page 5

Part VII-A Analysis of Income-Producing Activities

	Unrelated business income		Excluded by section 512 or 513		
	(a) Business code	(b) Amount	(c) Exclusion code	(d) Amount	(e) Related or exempt function income
1 Program service revenue:					
(a) Fees from government agencies					
(b)					
(c)					
(d)					
(e)					
(f)					
(g)					
2 Membership dues and assessments					
3 Interest on savings and temporary cash investments					
4 Dividends and interest on securities					
5 Rental of real estate					
6 Rental of personal property					
7 Other investment income					
8 Gross amount received from sales of assets other than inventory					
9 Special fundraising events					
10 Gross sales of inventory, less returns and allowances					
11 Other revenue:					
(a)					
(b)					
(c)					
(d)					
12 Subtotal (Add columns (b), (d), and (e).)					
13 **TOTAL** (Add line 12, columns (b), (d), and (e).)					

Part VII-B Relationship of Activities to the Accomplishment of Exempt Purposes

Line No. ▼	Explain below how each activity for which income is reported in column (e) of Part VII-A contributed importantly to the accomplishment of your exempt purposes (other than by providing funds for such purposes).

Form **990EZ**

Department of the Treasury
Internal Revenue Service

Short Form
Return of Organization Exempt From Income Tax

Under section 501(c) (except black lung benefit trust or private foundation) of the Internal Revenue Code or section 4947(a)(1) trust

(For organizations with gross receipts less than $100,000 and total assets of less than $500,000.)

Note: You may be required to use a copy of this return to satisfy state reporting requirements. See instruction D.

OMB No. 1545-0047

1989

For the calendar year 1989, or fiscal year beginning , 1989, and ending , 19

Use IRS label. Otherwise, please print or type.	Name of organization	A Employer identification number (see instruction L)
	Address (number and street)	B State registration number (see instruction D)
	City or town, state, and ZIP code	C Check here if application for exemption is pending . . . . . ▶ ☐

D Check type of organization—Exempt under section ▶ ☐ 501(c) ( ) (insert number), OR ▶ ☐ section 4947(a)(1) trust

E Accounting method: ☐ Cash ☐ Accrual ☐ Other (specify) ▶

F Is this a separate return filed by a group affiliate? . . . . . ☐ Yes ☐ No

G If you answered "Yes" to F, enter the four-digit group exemption number (GEN) ▶

H ☐ Check here if your gross receipts are normally not more than $25,000 (see instruction B11). You do not have to file a completed return with IRS but should file a return without financial data if you were mailed a Form 990 Package (see instruction A). Some states may require a completed return.

501(c)(3) organizations and 4947(a)(1) trusts must also complete and attach Schedule A (Form 990). (See instructions.)

Part I Statement of Support, Revenue, and Expenses and Changes in Fund Balances

			Total
Support and Revenue	1	Contributions, gifts, grants, and similar amounts received (attach schedule—see instructions)	
	2	Program service revenue	
	3	Membership dues and assessments	
	4	Investment income	
	5a	Gross amount from sale of assets other than inventory	
	b	Minus: cost or other basis and sales expenses	
	c	Gain (loss) (attach schedule)	
	6	Special events and activities (attach schedule—see instructions):	
	a	Gross revenue (not including $ _____ of contributions reported on line 1)	
	b	Minus: direct expenses	
	c	Net income (line 6a minus line 6b)	
	7a	Gross sales minus returns and allowances	
	b	Minus: cost of goods sold	
	c	Gross profit (loss)	
	8	Other revenue (describe ▶ _____)	
	9	Total revenue (add lines 1, 2, 3, 4, 5c, 6c, 7c, and 8)	
Expenses	10	Program services (see instructions)	
	11	Management and general (see instructions)	
	12	Fundraising (see instructions)	
	13	Payments to affiliates (see instructions)	
	14	Total expenses (add lines 10 through 13)	
Fund Balances	15	Excess (deficit) for the year (subtract line 14 from line 9)	
	16	Fund balances or net worth at beginning of year (from line 21, column A)	
	17	Other changes in fund balances or net worth (attach explanation)	
	18	Fund balances or net worth at end of year (add lines 15, 16, and 17)	

Part II Balance Sheets

		(A) Beginning of year	(B) End of year
19	Total assets		
20	Total liabilities		
21	Net worth or fund balances		

Form 990EZ (1989) Page 2

Part III Statement of Program Services Rendered

List each program service title on lines a through c; for each, identify the service output(s) or product(s), and report the quantity provided. Enter the total expenses attributable to each program service and the amount of grants and allocations included in that total. (See instructions for Part III.)

Expenses (Optional for some organizations—see instructions)

a _____ (Grants and allocations $)

b _____ (Grants and allocations $)

c _____ (Grants and allocations $)

d Other program service activities (attach schedule) . . . . . (Grants and allocations $)

e Total (add lines a through d) (should equal line 10) . . . . . .

Part IV List of Officers, Directors, and Trustees (List each one whether compensated or not. See instructions.)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (if not paid, enter zero)	(D) Contributions to employee benefit plans	(E) Expense account and other allowances

Part V Other Information

		Yes	No
22	Has the organization engaged in any activities not previously reported to the Internal Revenue Service? If "Yes," attach a detailed description of the activities.		
23	Have any changes been made in the organizing or governing documents, but not reported to IRS? If "Yes," attach a conformed copy of the changes.		
24	*If the organization had income from business activities, such as those reported on lines 2, 6, and 7 (among others), but NOT reported on Form 990-T, attach a statement explaining your reason for not reporting the income on Form 990-T.*		
a	Did the organization have unrelated business gross income of $1,000 or more during the year covered by this return?		
b	If "Yes," have you filed a tax return on Form 990-T, Exempt Organization Business Income Tax Return, for this year?		
25	Was there a liquidation, dissolution, termination, or substantial contraction during the year? (See instructions.) If "Yes," attach a statement as described in the instructions.		
26a	Enter amount of political expenditures, direct or indirect, as described in the instructions ▶		
b	Did you file Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations, for this year?		
27	*Section 501(c)(7) organizations.*—Enter: a Initiation fees and capital contributions included on line 9		
b	Gross receipts, included in line 9, for public use of club facilities (See instructions.)		
c	Does the club's governing instrument or any written policy statement provide for discrimination against any person because of race, color, or religion? (See instructions.)		
28	*Public interest law firms.*—Check here ▶ ☐ and attach information described in the instructions.		
29	List the states with which a copy of this return is filed ▶		
30	The books are in care of ▶ Telephone no. ▶ Located at ▶		
31	*Section 4947(a)(1) trusts filing Form 990 in lieu of Form 1041.*—Check here ▶ ☐ and enter the amount of tax-exempt interest received or accrued during the tax year ▶		

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

▶ Signature of officer | Date ▶ Title

Paid Preparer's Use Only

Preparer's signature ▶ Date Check if self-employed ▶ ☐

Firm's name (or yours if self-employed) and address ▶ ZIP code

[FR Doc. 89-4177 Filed 2-22-89; 8:45 am]

BILLING CODE 4830-01-C

Sunshine Act Meetings

Federal Register
Vol. 54, No. 35
Thursday, February 23, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 28, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, March 2, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Certification for Payment of 1988 Primary Matching Funds.
Legislative Recommendations.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-4336 Filed 2-21-89; 3:13 pm]

BILLING CODE 6715-01-M

[USITC SE-89-07]

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, March 1, 1989 at 1:00 p.m.

PLACE: Room 101, 500 E. Street, S.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS OF BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Carbonated Candy Products (D/N 1487).
   Certain Recombinant Erythropoietin (D/N 1489).
5. Inv. No. 731-TA-388 (F) (All-Terrain Vehicles from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

Feb. 17, 1988.

[FR Doc. 89-4337 Filed 2-21-89; 3:16 pm]

BILLING CODE 7525-02-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Board of Directors meeting will be held on March 2-3, 1989. The Executive Session will be held on March 2, from 6:00 p.m., or immediately following the previous meeting, until 6:45 p.m. The open portion of the meeting will commence Friday, March 3, at 8:00 a.m. and continue until 1:00 p.m.

PLACE: The Marriott Marquis Hotel, Yukon-McKenzie Room, 265 Peachtree Center Avenue, Atlanta, Georgia 30303.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act [5 U.S.C. 552b(c), (2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5 (a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

Executive Session

1. Personnel and Personal Matters
2. Litigation and Investigation Matters

Board of Directors Meeting (Open)

1. Allocation of Grant Recovery Funds
2. 45 CFR Part 1609, Fee-Generating Cases
3. 45 CFR Part 1610, Funds from Sources Other Than the Corporation
4. 45 CFR Part 1611, Eligiblity
5. Report from Task Force on Client Board Member Training

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: February 21, 1989.

Maureen R. Bozell,

Secretary.

[FR Doc. 89-4346 Filed 2-21-89; 3:50 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION.

Task Force On Client Board Member Training Meeting

TIME AND DATE: The Task Force on Client Board Member Training will meet on Thursday, March 2, 1989, from 1:00 p.m. until 2:30 p.m.

PLACE: The Marriott Marquis Hotel, Yukon-McKenzie Room, 265 Peachtree Center Avenue, Atlanta, Georgia 30303.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED: 1. Public Comment on Client Issues.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: February 21, 1989.

Maureen R. Bozell,

Secretary.

[FR Doc. 89-4347 Filed 2-21-89; 3:50 am]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The Meeting will be held on Thursday, March 2, 1989. It will commence at 2:30 p.m., or immediately following the previous meeting, and continue until 6:00 p.m.

PLACE: The Marriott Marquis Hotel, Yukon-McKenzie Room, 265 Peachtree Center Avenue, Atlanta, Georgia 30303.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. 45 CFR Part 1610, Use of Funds from Sources Other Than the Corporation
2. 45 CFR Part 1611, Eligibility
3. Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: February 21, 1989.

Maureen R. Bozell,

Secretary.

[FR Doc. 89-4348 Filed 2-21-89; 3:50 pm]

BILLING CODE 7050-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, February 28, 1989.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, D.C. 20594.

STATUS: The first two items are open to the public. The last two items are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report—Horizon Air, Inc., Flight 2658, deHavilland DHC–8, N819PH, Seattle, Washington, April 15, 1988.
2. Recommendations to FAA: Engine Stoppage in Fuel Injected Piper Model Airplanes Due to Ice/Snow Blockage of Induction Air Filters. (Calendared by Member Burnett.)
3. Opinion and Order: Administrator v. Hanson, Docket SE–8273; disposition of Administrator's appeal. (Calendared by Member Nall.)
4. Opinion and Order: Administrator v. Saccoman, Docket SE–8117; disposition of the Administrator's appeal. (Calendared by Member Dickinson.)

FOR MORE INFORMATION CONTACT:
Bea Hardesty (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

February 21, 1989.

[FR Doc. 89–4291 Filed 2–21–89; 12:37 pm]

BILLING CODE 7533–01–M

POSTAL SERVICE, (Board of Governors)

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, March 7, 1989, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, March 6, 1989, but it will consist entirely of briefings and is not open to the public.

Tuesday Session

March 7–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 6–7, 1989.
2. Remarks of the Postmaster General.
3. Appointment of Audit Committee Members. (Robert Setrakian, Chairman, Board of Governors)
4. Capital Investment Results. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
5. Report on Marketing and Communications Group Programs. (Peter K. Eichorn, Senior Assistant Postmaster General, Marketing and Communications Group)
6. Report on Law Department Programs. (Louis A. Cox, General Counsel)
7. Capital Investments. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)
   a. Brockton, Massachusetts, General Mail Facility.
   b. Brooklyn, New York, General Mail Facility.
8. Tentative Agenda for April 3–4, 1989, meeting in Memphis, Tennessee.

David F. Harris,

Secretary.

[FR Doc. 89–4338 Filed 2–21–89; 8:45 am]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 54, No. 35
Thursday, February 23, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F-0171]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 89-2981 beginning on page 6121 in the issue of Wednesday, February 8, 1989, make the following corrections:

On page 6122, in the 2nd column, in the 8th line, "circumstances" should read "circumstance"; and in the 13th line, "of Delaney" should read "or Delaney".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

Correction

In notice document 89-2928 beginning on page 6174 in the issue of Wednesday, February 8, 1989, make the following correction:

On page 6175, in the 1st column, under **SUPPLEMENTARY INFORMATION**, in the advisory committee listing, in the 10th line, after "Committee" insert "Radiopharmaceutical Drugs Advisory Committee."

BILLING CODE 1505-01-D

Federal Register

Thursday
February 23, 1989

Part II

Department of Education

Office of Special Education and Rehabilitative Services

The Kuhry Bequest Program; Notice of Proposed Applicability of Regulations

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; the Kuhry Bequest Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Applicability of Regulations.

SUMMARY: The Secretary proposes to apply the Rehabilitation Short-Term Training regulations in 34 CFR Part 390 to the Kuhry Bequest Program with one change. The change is that the Secretary proposes new selection criteria for this program. The Secretary takes this action to establish appropriate procedures for implementation of this program.

DATES: Comments must be received on or before March 27, 1989.

ADDRESS: All comments concerning this notice of proposed applicability of regulations should be addressed to Eileen Lehman, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW. (Mary E. Switzer Building, Room 3033), Washington, DC 20202–2575.

FOR FURTHER INFORMATION CONTACT: Eileen Lehman, telephone (202) 732–4281.

SUPPLEMENTARY INFORMATION: The Secretary is the recipient of a bequest of $614,780 to provide for the care and welfare of people who are blind. These funds will be used to provide grants (referred to in this notice as the Kuhry Bequest Program, named after the bequestor) for short-term training of rehabilitation professionals related to the care and welfare of people who are blind.

The Secretary proposes to apply the Rehabilitation Short-Term Training regulations in 34 CFR Part 390 to the Kuhry Bequest Program with one change. These regulations have been selected because the general requirements (Subpart A) of the Short-Term Training program and the Kuhry Bequest Program are similar. Subpart B and Subpart E, which specify the kinds of projects authorized under the program and the conditions to be met by a grantee, have been demonstrated to be sound. Because the Kuhry Bequest Program, under the terms of the bequest, is only for the care and welfare of those who are blind, the selection criteria in Subpart D are not wholly appropriate. The selection criteria proposed adhere to the terms of the bequest, are clearer, and are presented in an order that should benefit applicants in the preparation of applications in terms of ease and coherence.

Instead of the selection criteria in 34 CFR 390.30, the Secretary proposes to apply the following selection criteria:

Selection Criteria

(a) Evidence of need (15 points).

(1) The Secretary reviews each application to determine that the need for the training project has been adequately justified.

(2) The Secretary reviews each application to determine that the need for the training project has been established and validated in terms of its potential impact on the rehabilitation service delivery system.

(b) Plan of operation (25 points).

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary reviews each application to determine the extent to which the application shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) Nature and scope of training program content (15 points).

(1) The Secretary reviews each application to determine that the application demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary reviews each application to determine that—

(i) The educational objectives are clearly defined, measurable and achievable; and

(ii) The proposed course content and methodology to develop and implement the training can be expected to achieve the stated educational objectives.

(iii) The program and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program.

(d) Quality of key personnel (15 points).

(1) The Secretary reviews each application to determine the quality of key personnel proposed for the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) Extent to which persons who are familiar with blindness are involved in the project (10 points).

(1) The Secretary determines the extent to which the application shows:

(i) Persons who are familiar with blindness are involved in the planning and development of the project;

(ii) Persons who are familiar with blindness participate in the implementation or conduct of the project as directors, trainers, advisors, or consultants; and

(iii) Plans for recruiting persons who are familiar with blindness to participate in the project as trainees.

(2) The Secretary reviews each application to determine the extent to which it demonstrates the support of

community organizations with an interest in providing services for persons who are blind.

(f) Adequacy of resources (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities equipment, and supplies.

(g) Evaluation plan (5 points).

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(2) The Secretary determines that the methods of evaluation are appropriate for the project and, to the extent possible, are objective, and produce data that are quantifiable.

(h) Budget and cost effectiveness (10 points).

(1) The Secretary reviews each application to determine that the project has an adequate budget and is cost effective.

(2) The Secretary determines that—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this notice of proposed applicability of regulations.

All comments submitted in response to this proposed notice will be available for public inspection, during and after the comment period, in room 3033, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.999, The Kuhry Bequest Program)

Dated: February 13, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-4207 Filed 2-22-89; 8:45 am]

BILLING CODE 4000-01-M

Reader Aids

Federal Register

Vol. 54, No. 35

Thursday, February 23, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

305 ..... 5207, 6861
310 6861

3 CFR

Proclamations:
5937 7751
Executive Orders:
12669 7753
Administrative Orders:
Memorandums
Dec. 22, 1988 6237
Presidential Determinations:
No. 89-10 of
Jan. 18, 1989 5071

5 CFR

890 7755
Proposed Rules:
550 5494
890 7039

7 CFR

1 5073
26 5921
68 5923
250 7521
271 6990
272 6990
273 6990
274 6990
275 6990
276 6990
401 ..... 7391, 7526
405 6381
800 5924
802 5925
905 ..... 5405, 5583
907 ..... 5406, 6503, 7171, 7172
910 ..... 5407, 6381, 7172
919 5584
932 5585
959 6862
981 ..... 5408, 6863
1006 6382
1012 6382
1013 6382
1124 5587
1125 5587
1150 6263
1413 6232
1700 6867
1709 6867
1735 5925
1822 6873
1924 6874
1955 6874
1965 ..... 6874, 7528
1980 5409
3017 6363
Proposed Rules:
29 5494
54 7431
58 6681
354 7195
401 7432
800 7778
905 6136
1933 6532
1944 6532
1980 6417

8 CFR

101 5927
103 6875
235 6365
245a 6504
299 7173
499 7173
Proposed Rules:
204 7433

9 CFR

11 7174
94 7391
201 5073
307 6388
350 6388
351 6388
352 6388
354 6388
355 6388
362 6388
381 6388
391 6388
Proposed Rules:
92 5089
97 7195
113 5939
307 6684
310 6684
381 7434

10 CFR

2 7756
50 ..... 7178, 7530
62 5409
70 6876
74 6876
430 6062
1036 6363
Proposed Rules:
20 ..... 5089, 6296
50 6935
430 6364
600 6296
710 5376

11 CFR

Proposed Rules:
110 6684
113 6684
114 6684
116 6684

181.....7763
207.....6519
334.....6519, 7033

Proposed Rules:
165.....7571
334.....7065

34 CFR
60.....7148
73.....6364
85.....6363
222.....6858
642.....7736

Proposed Rules:
379.....6808

35 CFR
253.....6364

36 CFR
211.....6891
217.....6891
228.....6892
251.....6891, 6892
1190.....5434
1209.....6363

Proposed Rules:
Ch. VII.....6553
222.....6425

37 CFR
1.....6893
2.....6893
10.....6520, 6659

Proposed Rules:
1.....6936
211.....5942

38 CFR
1.....6520
2.....5610
3.....5235, 5610
4.....7067
8.....5931
14.....5610, 5613
19.....5610
44.....6363

Proposed Rules:
21.....5640, 5944, 5945, 7206, 7784

39 CFR
111.....6911
265.....7417
3001.....7191

Proposed Rules:
111.....5641

40 CFR
32.....6363
52.....5236, 5448, 5449, 6125, 6286, 6287, 6912, 7034, 7543, 7764–7767
60.....5078, 6660
61.....5078
62.....7770
81.....5237
82.....6376
149.....6836
162.....6288
180.....5079, 5080, 6126–6130, 6392, 6915–6918
185.....6129, 6130
186.....6130
248.....7328
261.....5081
262.....7036
271.....6290, 6396, 7417
272.....7420, 7422
280.....5451
300.....6521, 7424, 7548, 7549
704.....5197, 6918

Proposed Rules:
52.....5083, 5247, 5249, 6302, 6307, 6430, 6936, 7068, 7069, 7207, 7572, 7794
60.....5302, 6850
81.....6733
180.....5502, 6151, 6937, 7796
228.....7207, 7211
257.....5746
260.....7214
261.....7214
262.....7214
264.....7214
265.....7214
270.....7214
271.....5500, 7214
300.....6153
302.....7214
372.....7214
503.....5746

41 CFR
101–17.....6291
101–50.....6363
105–68.....6363

Proposed Rules:
201–1.....5904, 5905
201–2.....5905
201–6.....5905
201–7.....5904
201–8.....5905
201–11.....5905
201–16.....5904
201–23.....5904, 5905
201–24.....5904, 5905
201–30.....5904, 5905
201–32.....5904, 5905
201–38.....5904, 5905
201–39.....5905
201–40.....5904, 5905
201–41.....5905

42 CFR
57.....5615
413.....5316, 5619
442.....5316
447.....5316
483.....5316
488.....5316
489.....5316
498.....5316

Proposed Rules:
405.....5946
415.....5946
431.....7798
433.....5452, 7798
435.....7798
436.....7798
440.....7798
447.....7798

43 CFR
4.....6483, 7504
12.....6363

Public Land Orders:
3708.....6919
6696.....5302
6706.....6232
6707.....5932
6708.....6919
6709.....6919

Proposed Rules:
11.....5093

44 CFR
17.....6363
64.....5462, 6522
65.....5238, 5239
67.....5240, 6920

Proposed Rules:
67.....5971, 5979

45 CFR
76.....6363
400.....5463
620.....6363
670.....7132
1080.....6368
1154.....6363
1169.....6363
1185.....6363
1229.....6363
2016.....6363

Proposed Rules:
670.....7071
704.....5504

46 CFR
25.....6396
58.....6396
147.....6396
184.....6396
221.....5382
252.....5085
282.....5086

Proposed Rules:
31.....5642
71.....5642
91.....5642
550.....5253, 5506
580.....5506
581.....5506

47 CFR
25.....5483
69.....6292
73.....5243–5245, 5623, 5624 5932, 5933, 6132–6134, 6294, 6930
97.....5933, 7771

Proposed Rules:
2.....7812
73.....5979–5983, 6154, 6155, 6307, 6308, 6939, 7450–7453, 7813
87.....7812

48 CFR
52.....6931
204.....5484, 7425
205.....7525
207.....7425
213.....7425
215.....7425
216.....7425
219.....5484, 7425
223.....7425
225.....7425
235.....7425
245.....7425
252.....7191, 7425
552.....6931
1828.....7037
1837.....5625
1852.....7037

Proposed Rules:
Ch. 53.....7813
25.....6251
52.....6251, 7515
505.....5516
509.....6308
552.....6308
1515.....7072
1552.....7072

49 CFR
29.....6363
192.....5484, 5625
195.....5625
218.....5485
1312.....6403
1314.....6403
385.....7191
386.....7191
390.....7191
391.....7191
392.....7191
393.....7191
394.....7191
395.....7191
396.....7191
398.....7191
399.....7191
580.....7772

Proposed Rules:
218.....7219
350.....7224
390.....7224, 7362
391.....7362
392.....5516, 7362
393.....5516, 7362
395.....7362
396.....5518
544.....5519
1016.....7454

50 CFR
17.....5935
217.....7773
222.....7773
227.....7773
285.....7430
380.....6407
611.....6524, 6932
646.....5938
652.....6415
655.....7777
672.....6524
675.....6134, 6934
683.....6531

Proposed Rules:
17.....5095, 5983, 5986, 7225, 7813
18.....6940
611.....7814
672.....6734, 7814
675.....7814

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List February 10, 1989

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 193 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued. Or, the previous year's full set may be purchased at a reduced price and mailed as a single shipment.

Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188

Previous year's full set: $115
(single shipment)

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*** 6462**

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

____ **Federal Register:** ____ One year as issued: $195 ____ Six months: $97.50

____ **Code of Federal Regulations:** ____ Current year $188 ____ Previous year's full set: $115 (single shipment)

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 (Rev. 1-1-89)